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Reviews

The Report on Ministers' Powers

By W. Ivor Jennings

Reader in English Law in the University of London; Legal Editor of "The Local Government Chronicle"

I

THE terms of reference of the Committee on Ministers' Powers, and therefore its Report,[1] deal with two problems which may be summarised as the constitutional consequences of delegating (*a*) legislative and (*b*) judicial, powers to Government Departments. These problems have been the consequence of developments in constitutional organisation during the last sixty years, and have therefore been considered at length by nearly all constitutional authorities of modern times. But they were not regarded as sufficiently acute for public inquiry until the Lord Chief Justice published an attack upon the whole system of delegation under the title *The New Despotism*.

[1] *Committee on Ministers' Powers. Report.* Cmd. 4060. Price 2s. 6d. net. The bibliography is immense: see especially Carr, *Delegated Legislation;* Freund, *Cases in Administrative Law;* John Dickinson, *Administrative Justice and the Supremacy of Law;* Gerrard Henderson, *The Federal Trade Commission;* W. A. Robson, *Justice and Administrative Law;* Port, *Administrative Law.* Among the learned journals, Public Administration has naturally devoted the closest attention to the problem; see in particular the following: "Growth of Administrative Discretion," by H. J. Laski (April, 1923); "Recent Tendencies towards the Devolution of Legislative Functions to the Administration," by Sir Josiah Stamp (January, 1924); "The Appellate Jurisdiction of Central Government Departments," by F. H. C. Wiltshire (October, 1924); "Appellate Jurisdiction," by I. G. Gibbon (October, 1924); "The Expert and the Layman," by Sir R. V. N. Hopkins (January, 1925); "The Principles of Regulation," by Garnham Roper (October, 1926); "The Principles of Regulation," by W. Tetley Stephenson (October, 1926); "Some Aspects of English Administrative Law," by K. B. Smellie (July, 1927); "The Powers of Public Departments to make Rules having the Force of Law," by I. G. Gibbon (October, 1927); "The Powers of Public Departments to make Rules having the Force of Law," by M. L. Gwyer (October, 1927); "The Powers of Public Departments to make Rules having the Force of Law," by Poul Andersen (October, 1927); "Legislative Powers of Public Authorities," by Harold Potter (January, 1928); "Local Inquiries," by E. H. Rhodes (January, 1928); "Bureaucracy," by the Rt. Hon. Sir John Anderson (January, 1929); "Mainly about the King's English," by Sir Ernest Gowers (April, 1929); "The Limitations of the Judicial Functions of Public Authorities," by T. M. Cooper (July, 1929); "The Appellate Jurisdiction of Government Departments," by I. G. Gibbon (July, 1929); "The Administrative Control of Road Traffic," by Sir John Brooke (April, 1930); "The Method of Social Legislation," by G. D. H. Cole (January, 1931); "Some Aspects of American Administrative Law," by Marshall E. Dimock (October, 1931); "Judicial Functions of the Administrator," by E. P. Everest (July, 1932).

Most of these were published before the Lord Chief Justice's book, and none of them is quoted by him, except C. T. Carr's and (without mentioning the author's name) W. A. Robson's books. The essays which C. K. Allen has since collected under the title of *Bureaucracy Triumphant* reveal him to have had the same angle of approach as the Lord Chief Justice, namely, that of a private lawyer who has never given real attention to the problems of public law.

Actually, the Lord Chief Justice had nothing to say in that book which had not been more temperately expressed before, and he did not consider certain aspects of the problems which had been dealt with by less eminent writers. When he was invited to give evidence before the Committee, he replied that " he had at present nothing to add " to his book. It is therefore evident that he either has not read the criticisms which that work brought forth, or (if he has read them) that they have not induced him to modify his opinions. In any case, the Committee has removed the foundation of his case by acquitting the Civil Service of sinister motives. There has been no attempt " to cajole, to coerce, and to use Parliament."[2]

It has never been suggested, at least by those who have any experience of delegated legislation, that any such legislation so far issued has transgressed the bounds of constitutional propriety. There are, it is true, at least two Orders in force containing provisions which are probably *ultra vires*.[3] But these appear to be due to misinterpretation rather than to deliberate misuse. Even the Lord Chief Justice could not give examples of abuse of powers; he could only tear from their contexts (knowing that any statute must be construed as a whole) the special statutory provisions which grant the powers, and made no attempt to prove any evil in their exercise. It is significant that the most serious inroads upon the effective control of Parliament are contained in recent emergency legislation; and it can hardly be suggested that some " anonymous official " in the Treasury has been conspiring with his fellows to bring into his own hands the powers of imposing duties on imports and " cuts " in all sorts of official salaries.

The truth is, as the Report points out,[4] that delegated legislation is the inevitable consequence of the adoption of collectivist ideals by all parties during the last sixty years. Parliament has neither the time nor the ability to discuss minor and technical details. It has not the time because it has never adapted its procedure to meet the new conditions, and because those conditions in themselves have enormously increased the amount of legislation necessary.[5] And it has

[2] *The New Despotism*, p. 17.

[3] They are referred to on p. 50 of the Report: one at least is well known.

[4] Page 22.

[5] Professor C. K. Allen has tried to prove this statement false by comparing the output of legislation in the years after 1865 and at the present time: *Bureaucracy Triumphant*, pp. 145-6. His figures give a false impression, for he has forgotten several important factors, including: (*a*) the Government now has to take nearly the whole of the time of the House owing to the amount and complexity of its own legislation, so that a considerable number of small private members' bills is no longer possible; (*b*) much of the legislation classed as public in 1865 is now classed as private and local; (*c*) a great part in bulk of the legislation in the early period was made up of the Mutiny and Naval Discipline Acts which are now superseded by permanent statutes; (*d*) Gladstone had not yet begun the practice of putting all the financial measures into two Acts only; (*e*) a great many of the statutes dealt with Scotland, Ireland, the Isle of Man, and the Colonies, so that unless they raised big political issues they were seldom discussed.

not the ability because the character of legislation has changed, while Parliament has not developed any such technique of consultation with experts as would enable it to deal adequately with technical subjects.[6]

The practice of delegation is, however, susceptible of abuse. Parliament needs to keep control not because any grave scandals have yet been produced, but because uncontrolled powers are always capable of being abused. The positive recommendations of the Committee have this idea as their foundation. They include a simplification of nomenclature for all delegated legislation, the rigid limitation of exceptional provisions permitting the modification of statutes[7] and the exclusion of the jurisdiction of the courts to declare delegated legislation *ultra vires*, and a new and more comprehensive Rules Publication Act. Most important of all are the recommendations for securing the effective control by Parliament both of the grant and of the exercise of legislative powers. These involve the standardisation of procedure for laying Bills before Parliament, the issue of memoranda for explaining the purpose of a legislative power, and the setting up of a Standing Committee in each House for considering Bills containing legislative powers and regulations laid before the House.

These recommendations ought not to meet with serious opposition. We would stress the practical importance of one recommendation whose value may appear small. Whenever Provisional Regulations are issued it is suggested by the Committee that steps should at once be taken to issue them as Statutory Rules and Orders. It is perhaps not realised in Whitehall that clerks to local authorities have much difficulty in keeping pace with delegated legislation, and they cannot always remember whether Provisional Rules have or have not been superseded. He would be a bold man who would venture to say off-hand what regulations exist at the moment on any particular topic dealt with in the Road Traffic Act of 1930.

Too much should not be hoped for from the setting up of Standing

[6] There were not six persons in the House of Commons which passed the Local Government Act in 1929 who understood the new grant system. There were several hundreds in the country.

[7] The so-called "Henry VIII Clause." But is a power to amend statutes so very terrible? The Lord Chancellor has the power to amend procedural statutes: see, *e.g.*, section 57 of the Supreme Court of Judicature (Consolidation) Act, 1925: "The Lord Chancellor may, if at any time it appears to him desirable so to do with a view to the more convenient administration of justice, by order direct that any jurisdiction vested in the High Court in respect of any proceeding which by any enactment (including this Act) or any rule or order made under any enactment (including this Act) is assigned to any Division shall, notwithstanding that enactment, rule or order, be assigned to such other Division as may be specified in the order. . . ." And the Lord Chief Justice himself is a member of a Committee which has power to make rules of court for the purpose of "repealing any enactments which relate to matters with respect to which rules are made under this section," *i.e.*, section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925.

Committees. Membership will carry neither honour nor glory, and it is certain that most regulations will be as little comprehensible tc the average member as the Acts under which they are issued. Ultimately, the control will depend upon the clerk to the committee, who will no doubt draw the attention of members to any provision which appears to him to be objectionable. No doubt the Lord Chief Justice would welcome this proposal to set a bureaucrat to catch a bureaucrat.

On one point in this section I find mystlf unable to agree with the opinion of the Committee. On the question of drafting it is evident that the opinions of the legal members have prevailed. I do not think that the ordinary lawyer is a good judge of drafting. He is concerned with the marginal case only, the case which comes or might come into court. No matter how skilled the drafting, such marginal cases cannot be prevented. Language does not permit of such accuracy of expression, nor can human foresight meet all the changing circumstances of life. Statutes have to use ordinary language, and all unscientific language is vague. Attempts at definition only make matters more complicated, for definitions too have to be expressed in ordinary language. As Bentham pointed out long ago, in criticism of Blackstone, there ought logically to be definitions of definitions, and definitions of those definitions, and so *ad infinitum*.

My favourite example is the word " drunk," a word which has to be interpreted in the courts about 50,000 times a year. Ninety-nine times out of a hundred anybody who knows one end of a bottle from the other can say whether the accused was drunk. The hundredth is the marginal case, where everything depends upon the meaning of " drunk." Two courses are open to the law: either the question can be left to the discretion of the court, in which case the court will complain because the Acts give no guidance to the meaning of the word; or a definition can be given. If a definition is given, we shall find that (*a*) certain persons are defined to be drunk when the publican and I think that they are not, (*b*) certain persons are defined not to be drunk when the publican and I are definitely of the opinion that they are, and (*c*) the definition will in some cases be difficult of interpretation, and sarcastic language will be used about a draftsman who could not frame a definition which was capable of easy interpretation. Close definition does not really provide certainty: it provides complication and may outrage common sense.

The success of the draftsman in the eyes of the appellate courts and the lawyers who practise therein depends upon whether his language is capable of obvious application to the unusual marginal

cases which come before them. The success of the draftsman in my view depends upon whether the people who have to obey the law can understand it easily because it is in accordance with common sense. In the case of administrative legislation, this means that the administrators who have to apply the Act and the citizens who come into contact with them must understand easily what it is all about, without the aid of counsel, cases stated, text-books, midnight oil, or wet towels. I have heard Lord Justice Scrutton use strong language about the drafting of the Rating and Valuation (Apportionment) Act, 1928. But the real success of the drafting of that statute depends upon whether the ordinary valuation officer and business man has been able to understand its application to the ordinary hereditament. Perhaps it may be added that he could not, though not entirely through the fault of the draughtsman.

If it be accepted that the function of a statute is to tell some layman to do something or to refrain from doing something, then it seems to me to be obvious that the fact that the higher courts find difficulty in applying it to marginal cases is beside the point. It is their function to do the application, for the simple reason that those who submitted the legislation to Parliament had general ideas in their heads and had not applied them to particular cases. From this two things follow which are not in accordance with the conclusions of the Committee. The first is that delegated legislation is not necessarily worse drafted than Acts of Parliament. The second is that difficulties of interpretation follow usually not from defective drafting but from a defective technique of interpretation.

The Report asserts[8] that " regulations on the whole tend to be somewhat less well drafted than Government Bills as originally presented to Parliament, which are all drawn in the Office of Parliamentary Counsel." I do not know whether this is true or not, since my knowledge of delegated legislation is limited in the main to the sphere of local government. Nor do I know whether local government regulations are drafted in the Ministry of Health or in the Office of Parliamentary Counsel. But I am prepared to assert that the ordinary local government official generally understands his local government regulations better than his local government Acts. There are several reasons for this. Regulations have not to be drafted so as to pass easily through Parliament: " Bills," Lord Thring observed, " are made to pass as buttons are to sell." Further, regulations commonly deal with technical subjects lying within narrow limits, and so can be expressed in short sentences and technical language. But the chief reason is, I think, that Bills are drafted with an eye on the judge, while the draftsman of regulations

[8] Page 49.

is concerned only to make himself plain to the official.

On the question of interpretation I agree with the criticisms of Professor Laski in his supplementary note; nor am I impressed with the essay on the judicial method which the majority of the Committee included for his benefit. The Report assumes, as Professor Laski truly points out, that interpretation is easy if only Acts are properly drafted. The truth is that imperfections of language alone make perfect drafting impossible. There must be marginal cases in which the court may find either for the defendant or for the plaintiff without outraging the language used. If a statute asserts that all sheep must be classified as either black or white, and a sheep is half black and half white, how is the court to interpret? There is, I suggest, only one way. The court must ask what was the policy which induced Parliament to insist upon the classification. If the policy was to eradicate the black strain in sheep, then the sheep in court should be regarded as black, because that decision favours the policy.

This example is one which could be met by drafting. The draftsman would realise that such cases might occur, and provide for it specially. But what language would he use? Somewhere, no doubt, the word " primarily " would be used. Those of us who are concerned with derating have had experience of that word. Like many others, it is not and cannot be precise. Whether a pied sheep is primarily black or primarily white is a question of degree in which there can be no certainty. If we are given a test by which degree can be estimated, we still have that test in ordinary language, and the marginal cases will still exist. In short, the whole effect of an attempt to make the law definite is only to make it complicated. And this means that ordinary persons will no longer be able to understand it, while the marginal cases remain. The only thing to do is frankly to recognise that questions of degree cannot be precisely expressed, to make the demarcation as simple as possible, and to try to induce the court to make the demarcation in marginal cases according to the policy which the law is attempting to carry out.

Unfortunately, this erroneous notion that it is the function of the draftsman to make the law so certain that the only purpose of the court is to put the coin in the right slot in accordance with the directions has resulted in a very defective technique of interpretation to which Professor Laski rightly draws attention. The doctrine laid down in *Heydon's Case* was that a statute must be interpreted in the light of the mischiefs which it was intended to prevent. But by some process which has never been investigated this doctrine has been modified by a rule that the purpose of the legislation must for the most part be found " within the four corners of the legislation."

That is to say, it is not the policy which was clearly behind the legislation which matters, but the policy which the courts induce from the language of the legislation: and now that preambles have fallen out of fashion this may have no relation to the policy which is to be found, for instance, in the memorandum which accompanied the Bill on its introduction.[9] Moreover, the courts have developed certain presumptions about the intention of Parliament which are based essentially upon an individualistic conception of the State which has long ago been discarded by legislators of all parties. For example, if the object of separating the black sheep from the white was to destroy the black in order to preserve the white strain in all its purity, the courts would say that this was an interference with property, and that in case of doubt Parliament must be presumed not to have intended to interfere with property: therefore, a black-and-white sheep must be regarded as white.

Even if the courts did consider policy they would under present conditions find great difficulty in its application. To understand what a local government statute is trying to do it is necessary to have considerable knowledge about local government law and the way in which local administration functions. The valuation officer understood the general idea of the derating legislation while the ordinary lawyer was looking up the Act of 1925 to see what a valuation list was.[10] Technical legislation demands technical knowledge. Parliament has no "intention" in marginal cases because "it" never thought of them. But it had a policy, and what the judges ought to do is to legislate in accordance with that policy. The trouble is that in most administrative questions they do not understand what the policy is or (what is really the same thing) why it should be so.

I prefer to place objections to this part of the Report on this ground rather than on the unconscious bias of the judges against social legislation to which Professor Laski refers. That bias undoubtedly exists, but it is less important than the defects of technique and the failure to understand. To say, as the Report says,[11] that "the interpretation of written documents, whether statutes, contracts, or wills, requires the trained legal mind," is to assert three fallacies. The first is that a statute ought to be interpreted in the same way as a contract or a will, with which it has nothing in common except that it is in writing. The second is that a legal mind is "trained" to interpret legislation on subjects of which its possessor is entirely

[9] I have discussed this with examples in *Local Government in the Modern Constitution* (1931), pp. 39-65.

[10] This is not an exaggeration. In one of the early derating cases I heard counsel take the court through the Act of 1925 in order to explain how a rate was levied.

[11] Page 56.

ignorant. And the third is that statutes are made for lawyers to interpret.

II

The second part of the Report is in some ways a strange document. It begins by asserting all the legalistic fallacies of the individualistic constitutional lawyers of the nineteenth century, and then in its positive recommendations admits the case which elsewhere it denies. Perhaps the Lord Chancellor was to blame for asking the Committee "to secure the constitutional principle of the supremacy of the law." Nobody objects to that principle if it is rightly understood, but the phrase has close associations with antiquated constitutional principles.

The Report begins by stating not the need for "the supremacy of the law," but for something not quite the same, the "rule of law." In spite of the attacks which have been made upon this doctrine,[12] and in spite of Dicey's own (alleged) denial of it,[13] the Diceyan exposition is repeated word for word. Since at the critical moment the Report uses the Rule of Law to reject the suggestion of an administrative court which Dr. W. A. Robson put before the Committee, it will be wise to examine once more whether the doctrine contains any validity.

"That 'rule of law,'" says the Report,[14] quoting Dicey,[15] "which forms a fundamental principle of the Constitution, has three meanings, or may be regarded from three different points of view. It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even wide discretionary authority on the part of the Government . . . . It means, again, equality before the law, or the equal subjection of all classes to the ordinary law courts . . . . The 'rule of law,' lastly, may be used as a formula for expressing the fact that with us the law of the constitution, the rules of which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals as defined and enforced by the Courts."

The Report is not concerned with the third of these aspects, not merely (as the Report suggests) because it has nothing whatever

[12] M. Leroy, *La Loi*, ch. x; E. M. Parker, *State and Official Liability*, 19 Harvard Law Review, p. 335 *et seq.*; H. J. Laski, *Foundations of Sovereignty*, p. 103 *et seq.*; J. H. Morgan in G. E. Robinson's *Public Authorities and Legal Liability*; Garner, *La Conception anglo-saxonne du Droit administratif* in *Mélanges Hauriou*. I have twice tilted at the doctrine somewhat obliquely, *Local Government in the Modern Constitution*, p. 33 *et seq.*; *Principles of Local Government Law*, p. 29 *et seq.*

[13] See Jèze, *Principes généraux du Droit administratif*, p. 1.

[14] Page 72.

[15] *Law of the Constitution* (8th ed.), p. 198-9.

to do with the question in issue, but also (as the Report does *not* suggest) because it is not true. The greater part of the law of the constitution is to be found in the special statutes which regulate the powers and duties of public authorities, legislative and administrative. They are not in the least the " consequence of the rights of individuals as defined and enforced by the Courts." To one whose constitutional studies proceeded no further than the revolutionary constitutions and the Bill of Rights, the " rights of individuals " might appear to play a large part in the constitution, and such rights are in England mainly judicial legislation on the basis of the Acts of the Long Parliament, the Bill of Rights, and the Habeas Corpus Acts. But all modern legal systems have long since departed from the revolutionary idea of a single executive, royal or republican, exercising functions over isolated individuals. The rights of individuals figure prominently in the revolutionary constitutions because the prevailing political philosophy regarded the State as an entity exercising powers of control over individuals protected by an individualistic law of nature which contemplated every man seeking his happiness not in combination with others but against them. Man was in a state of nature until he consented to allow himself to be controlled in certain limited ways for certain limited purposes such as defence and public order. Since this doctrine was enunciated and the revolutionary constitutions were drawn up, the Industrial Revolution has altered the face of the world and the nature of political society. Man now seeks his happiness through combination with other persons, and the purpose which the State is trying to fulfil is the production of the means of happiness through a host of public authorities. Constitutional law is primarily the law relating to those authorities, authorities making the law and authorities exercising functions under the law.

The Report states[16] that in his book Dicey " has demonstrated how the unwritten constitution of England consists of a set of legal principles gradually evolved out of the decisions of our Courts of Justice in individual cases." Dicey has not dealt with the constitution of England. He has been concerned with a very small part of it which deals with public order. If the rights of personal liberty, of free speech, and of public meeting are part of the constitutional law of England (and I believe that they are not, save so far as they limit the freedom of action of public authorities[17]), they are a small part only. This " unwritten constitution " forms at most one hundredth of the constitution: the rest is written in the statutes.

The idea that it is the courts that have invented the modern Consti-

[16] Page 73.

[17] I have expressed this opinion in a note on " The Right of Assembly in England," 9 *New York University Law Quarterly Review*, pp. 217-221.

tion being thus denied, we may return to the more relevant aspects of the "rule of law." To take the first of them: the antithesis between "regular law" and "arbitrary power" is false. When the German Government superseded the Government of Prussia, it did so in accordance with regular law; when the French Government by decree superseded the ordinary law at the beginning of the German invasion, it acted under regular law, upheld by the courts; when the British Government legislated under D.O.R.A. or put the Emergency Powers Act into force, it acted strictly in accordance with regular law. We may indeed go back further: the Star Chamber acted in accordance with regular law until that law was altered; the most despotic of the Bourbons acted despotically because the regular law allowed him to do so. Everybody agrees that if the "rule of law" means that no act ought to be done by anybody without legal authority, then the "rule of law" ought to be obeyed. But if this be so, the rule of law is a characteristic of all constitutions, not some peculiar doctrine of the British Constitution. If, on the other hand, Dicey meant that public authorities ought not to have large powers, that is an opinion peculiar to a conservative Liberal-Unionist of the Victorian era, and is not a legal doctrine at all.

The rule of law, lastly, means "equality before the law," "the ordinary law of the land administered by the ordinary courts." This is really the sense in which the doctrine is used in the Report; for it is in this sense that Dicey contrasted it with what seemed to him to be a pernicious system of "administrative law" with which nations not so favoured as his own had, for their sins, been saddled. Taken literally, the doctrine is just nonsense. Is my legal position the same as that of a public official? Can I tax, take my neighbour's property, commit nuisances, condemn my neighbour's property as insanitary, declare that my neighbour shall not build on his land more than eight houses to the acre, build a sewer and compel my neighbour to drain his land into it, compel him to pave the road outside his house? There are thousands of such things which public authorities may do to me, but which I cannot do either to them or to anybody else. Is this equality before the law?

Of course, Dicey was not thinking of all this. He was a common lawyer. What he meant was that if a public officer committed a tort and the person injured came to Dicey for an opinion he would be able to explain that the public officer would, subject to some important qualifications (which, incidentally, Dicey left out) be just as liable as if a private citizen committed the same tort. "With us every official, from the Prime Minister down to the collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."[18] Given that the acts which a

[18] Dicey, *op. cit.*, p. 189.

public official can do *with* legal justification are very different from those which the ordinary citizen can do, this statement is almost true. But, strange to say, it is equally true of French law. For if a French public official does an act which he is not lawfully justified in doing he too is responsible (and in the civil court). The point of French law which was worrying Dicey is that some acts, though justified so far as the official is concerned, are not justified so far as the administration is concerned. Whereas in England, the administration is justified (because the King can do no wrong) even when the official is not. Or looking at it from the citizen's point of view, in France he sues the administration, in England he sues the official.

The purpose of French administrative law is to determine what public authorities may do, and what happens if they do something wrong.[19] In England we necessarily have rules for this purpose. This branch of the law includes the law relating to the civil service, local government law, and the law relating to public utilities. This is English administrative law. It differs from French administrative law in two respects only. In the first place, like every other branch of the law, it contains different rules. In England, superior orders are generally no defence; in France they sometimes are. In England a government department (the Ministry of Transport excepted) cannot be sued; in France they can be. In England and in France the defence of " act of state " covers different cases, though the English doctrine appears to give less protection to the individual. All this means only that English Law and French Law are not the same: it does not mean that in England there is something benign called " the rule of law " and in France something pernicious called " droit administratif."

In the second place, in France administrative law is applied by special administrative courts, while in England it is applied in the same courts. What profound difference this makes, I cannot understand. If the Lord Chief Justice and his colleagues of the Divisional Court were ordered to call themselves the Council of State and to sit in the London School of Economics whenever they heard a case on the Crown Paper, but to apply the same law as before, administrative law would not have changed an iota, though legal procedure would have changed slightly. There would be just as much " rule of law " as there is now.

In short, this rule of law is either common to all nations or it does not exist. We can establish administrative courts and alter the rules of administrative law as we please without infringing any rule of law. The fact that any proposal is rejected as contrary to the rule

[19] Dicey has a perfectly correct description at p. 329. *Cf.* my *Principles of Local Government Law*, p. 30.

of law indicates that the arguments against it are probably weak.

The second doctrine of this part of the Report is the distinction between judicial and quasi-judicial decisions. " A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:—(1) the presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law."[20] A quasi-judicial decision, on the other hand, does not necessarily involve (3), and never involves (4).

It will be noticed that the distinction made is not between judicial and quasi-judicial *functions* but between judicial and quasi-judicial *decisions*. The word " decision " is used in the terms of reference, but what the Committee really had to do was, as the Report says later,[21] " to determine (*a*) to what extent judicial *functions* should be entrusted (i) to Ministers and (ii) to Ministerial Tribunals; and (*b*) what are the right *methods* for the exercise of such functions and what are the proper safeguards." It is therefore important to notice that the analysis which we have just set out does not refer to the functions but to the methods. It is a remarkable fact, and this is, I think the major defect of this section of the Report that nowhere is there any attempt to answer the first question which the Report itself sets out. The principle which appears to follow from the summary of conclusions at pages 113-115 is that where the matter at issue is suitable for judicial *decision*, the function should be given to the courts. Similarly, at page 93, the Report says that " if the measure is one in which justiciable issues will be raised in the course of carrying the Act into effect, and truly judicial determination will be needed in order to reach decisions, then *prima facie* that part of the task should be separated from the rest, and reserved for decision by a Court of Law." What is a " justiciable issue? " When is " truly judicial determination " needed? That, surely, is the major problem. What the Committee had to show was that certain functions were better exercised by judges than by administrators. What functions?

Let us assume, however, that Parliament wants certain judicial

[20] Page 73.
[21] Page 82. The italics are mine.

decisions taken. The doctrine of the separation of powers and the recommendations of the Committee inform us that the decision should normally be taken by the courts. The analysis, if it is correct, will tell us how to determine whether the decision is to be judicial or quasi-judicial. This does not help the draftsman, of course, because what he has to do is to make up his mind whether a judicial decision is necessary. But it does enable us to criticise the draftsman on the ground that after plumping for a judicial decision he has given the function to an administrator. But is the analysis correct? Its essence, clearly, is in requisite (4), which in fact does nothing else than repeat the hoary fallacy that a judge is concerned with law and not with policy.[22]

The fixity and certainty of the law have been part of the English legal tradition for centuries. As a tradition it is but reluctantly breaking down. It used to be said that the function of the judge was to apply the law, not to make it. In the great majority of cases in courts of first instance, this in fact is what he does. Most cases will fall obviously within well-known categories if the facts alleged are proved to be true. To come back to our old example, if a man would clearly be drunk if the facts alleged are true, the magistrate's only function is to determine the facts, apply the law by entering a conviction, and assess an appropriate penalty according to a discretion given him by law. But this is not the function of an appellate court. Any case which gets into the law reports implies a new rule of law, and that new rule is made by the judge in the case. He is legislating: and he is necessarily legislating in accordance with a policy. He cannot apply law to make new law. The law is not in his breast ready to be pulled out. A judge is not a legal slot-machine.

On what principles, then, does he legislate? It is clear in the first place that it is the policy of the judges to keep the law as far as possible a coherent and cohesive system. If he is asked to determine what rule shall apply where an aeroplane is burned in the hangar attached to an up-to-date country hotel, he does not exclaim that an aeroplane is *sui generis* and consider in the light of social needs what the law ought to be. He considers whether he ought to apply the law relating to motor cars in hotel garages or the ordinary law of negligence. And when the rule relating to motor cars was first invented, the judge considered whether he should apply the rule applied to stage coaches in common inns or the ordinary rule of negligence. He is considering the desirability, but he weighs social advantage apart from advantages of legal procedure against his

[22] On this point I entirely agree with the criticisms of Dr. W. A. Robson, *Political Quarterly*, July, 1932, pp. 346-364.

anxiety to keep the law consistent. Even this is not true of some of his functions. When for the first time a Housing Act or a Derating Act is interpreted, the judge is limited only by the rules of interpretation. Within those rules he makes that decision which seems to him to be socially most desirable.

Nobody objects to this, provided that he has enough knowledge of the subject-matter to form a satisfactory opinion. But it must be realised that he is applying a *policy*. It may be his own policy, or it may be the policy behind the Act. It ought, obviously, to be the latter, but for the moment it is enough to notice that it is a policy. Thus, there is no essential distinction between an administrative decision in an individual case and a judicial decision. There are three possible elements in each, (*a*) the facts, (*b*) the rules of law, and (*c*) the policy which the law is intended to further. Where the whole question is (*a*), it is commonly left to a court unless the subject is so technical that the elucidation of the facts is best left to an expert. Where the emphasis is upon (*c*), the question is commonly left to be settled by an administrator. Where there is a doubt as to (*b*), then either the court or the administrator will have also to consider (*c*).

It seems to me that the way to approach the problem is different from that of the Report. It is clear, in the first place, that an administrator cannot be allowed to determine the bounds of his own authority. That follows from the principle of the separation of powers: or, for those who dislike principles, it follows because all authorities (courts included) have a tendency to extend their own powers at the expense of others. We allow supreme power to the legislature because we have some sort of control over it. We have no control over the administration or the judiciary except through the legislature. It is for the legislature to determine the bounds of the powers of the administration. But since it cannot do so except by laying down the general principles it has to leave the detailed application to the courts which, having no interest in the extension or limitation of administrative powers, consider what the limits ought to be in the light of the commands of the legislature. Thus the right to declare an administrative act *ultra vires* must rest with a court, though it must again be emphasised that it is the function of the court to apply the policy of the legislature, not some policy of its own.

Secondly, if the whole dispute is likely to be about a pure question of fact—that is, whether certain events did or did not happen—in respect of which there is likely to be a conflict and which is important, the question should normally be settled by a court, since the courts have developed a technique and have acquired an experience by which truth, or something near it, may be determined. But the court must be familiar with the type of facts presented, lest too great time

be taken up with preliminary explanations. Moreover, if technical knowledge is required the ordinary courts will not be competent.

It must be remembered, however, that a great many questions which appear to be pure questions of fact and which are said by the courts to be questions of fact in reality involve questions of interpretation, which, as the Report truly remarks,[23] are questions of law. For example, whether a man was or was not " drunk," what is the " annual value " of a house, what is a man's " income," whether a house is " insanitary " are questions of law as well as of fact. This is obvious when the appropriate words are inserted in quotation marks, since it then becomes clear that the meaning of these words is in issue. But it is not always realised that when a court asks whether the prisoner was drunk on the night of the 5th November the witness ought logically to be directed as to the meaning of " drunk "—or rather, since it is the duty of the court to determine the question, he ought to be told not to answer that question but to explain what the man was doing when he saw him.

In practice, the courts have adopted a wider notion of a question of fact. If, for instance, a case were stated to the Divisional Court on the ground that the accused was wrongly found to be " drunk," that Court would say that it was purely a question of fact and that there was no question of law disclosed in the case for them to answer. But the line is drawn arbitrarily, and it is not possible for any general principle to be laid down as to what is regarded as a question of law and what is a question of fact. For instance, nearly all the words used in defining " industrial hereditament " have been dealt with by the courts as if their meanings were questions of law.

It is clear that, in principle, an appeal ought to be given from an administrative decision on a question of law. But it will be found that nearly every administrative decision does in fact depend upon the meaning which is given to words. It follows that in practice nearly every decision can be overturned if the courts like to define " questions of law " widely enough. And I am afraid that they would, and so make the whole system of administrative decision absurd. There is, moreover, a procedural difficulty. In recommending an appeal on a point of law, the Report appears to contemplate an appeal by case stated.[24] That means that the administrative authority would state the facts and allow the court to apply the rules of law. But the facts which are relevant depend upon the meaning of the law. Until the law is known the facts cannot be stated. No one can watch the proceedings of the Divisional Court without being aware that very often it is talking about an entirely hypothetical case, because it has to assume facts which have not been stated.

[23] Page 56.
[24] Page 108.

If, on the other hand, procedure by case stated was not intended, every " fact " which involves a question of interpretation will be open to appeal, and the court will be a simple court of appeal from the administrative authority. On the whole, I think that the jurisdiction of the court to keep the authority within its powers will be found to be ample protection against administrative aggression. At the same time, there may be cases where the possibility of harsh administration will make an appeal on a point of law desirable.

In any case, not all questions of fact have to be determined by judges. If any expert knowledge is required, then the question is one primarily for an administrator. This covers, for example, all questions of valuation and all questions whose solution depends upon local knowledge. Also where the primary question is one of expediency, as is commonly the case with most administrative functions, it is clearly a matter for the administrative authorities, even if incidentally questions of fact or of law have to be determined. There will be great delay and expense and unnecessary confusion if the " judicial " function of determining law and facts is separated from the " administrative " function of exercising discretion.

It will be seen that, with the exception of the denial of the right of appeal on a point of law, except in certain cases where private interests are likely to be seriously affected, my conclusions do not differ substantially from those of the Report. But I do dissent strongly from their refusal to recommend that an administrative court should be established. I do not think that they understood what an administrative court is expected to do. It would do three things: (1) it would hear complaints that an administrative authority was exceeding its powers; (2) it would decide cases brought by individuals alleging that through a wrongful act committed by an administrative authority (*i.e.*, in excess of its powers) injury had been suffered; and (3) it would hear appeals from administrative decisions on points of law wherever they were allowed. All these functions are at present exercised by the High Court. No new administrative law would be created, though (as the Committee recommends) a better procedure could be adopted. The " rule of law " simply has nothing whatever to do with the question. An administrative court would be just as much a part of the ordinary judicial system as the High Court. Administrative law would be neither more nor less a branch of the ordinary law than it is now. There would be just as much and just as little equality before the law as there is now. Dicey's views are not only wrong but irrelevant.

The essential reasons for establishing an administrative court are three in number:—

(1) administrative questions are now so technical that legal

questions relating to them ought to be decided by a judge familiar with the problems which administrative law is trying to solve;

(2) the present procedure of the High Court is not suited to its functions in the control of administrative authorities;

(3) new rules of interpretation and of liability ought to be developed in relation to the special problems of administrative law.

With regard to the first of these, I have constantly emphasised in this paper, as Professor Laski emphasised in the Report, that the interpretation of administrative statutes, like the interpretation of all other statutes, does involve policy. In other matters the courts generally know what that policy is. In dealing with the problems of administrative law they sometimes do not. Every person interested in local government law, for example, is aware that he cannot begin to understand a statute like the Housing Act or the Town and Country Planning Act without knowing what the local authorities have done and have tried to do during the past twenty-five years. The Committee does in fact admit this part of the case. They recognise that there may be cases where a special Appeal Tribunal is necessary:[25] and further, they recommend that appeals on points of law should go to a single judge and that " the question of appropriating particular judges for such cases (on the lines of the Commercial Court and revenue cases) should be considered."[26] Now the reason for the Commercial Court and the Revenue Judge is that the questions with which they deal ought to be decided by someone who is, or who can become, an expert in these branches of the law. When we ask for an administrative judge—or court—we say only that these cases ought not to go to the Divisional Court but to a single judge, and that that judge ought to be familiar with the problems of modern administrative law.

My second argument assumes that *certiorari* and the other prerogative writs are " too expensive and in certain respects archaic, cumbrous and too inelastic."[27] This argument, then, is admitted by the Committee to be valid. I would go just a little further, and suggest that there is not present procedure used in the High Court which can be copied with advantage. I agree entirely that the procedure should provide:—

" (1) that the time within which an appeal may be brought should be strictly limited;

(2) that the appeal should be determined in a summary manner;

[25] Page 117.
[26] Page 108.
[27] Page 99.

(3) that the appeal should be heard by a single judge; and
(4) that his decision should, as a rule, be final."[28]

Thus, the Committee agrees that questions of administrative law should be decided by a single judge who knows something about administrative problems, and that he should be so loosely attached to the High Court that there should not be an appeal from his decisions.

My third argument has already been set out in connection with delegated legislation. The present method of interpretation is simply a method of chopping bad logic in the pretence that the policy of legislation can be found wthin its four corners. What is wanted is a court which will wipe out the present rules of interpretation. It can do so only if it is separated from the High Court. Moreover, it is not merely the rules of interpretation which need reforming. The conditions of liability of public authorities need changing. The Committee emphasises the need for passing the Crown Proceedings Bill.[29] If that Bill is ever passed it will need a liberal interpretation by a court which is not limited by the ancient boundaries of contract and tort, in order that the subject may be effectively protected against arbitrary administrative acts. To be arrested by a policeman on a charge of soliciting is a much greater wrong than to be imprisoned in a neighbour's backyard in the course of a little suburban dispute, and the court should not try to develop the law on the subject on the same lines. What it needs to do, that is to say, is to develop the law laid down by Parliament with something of the spirit of the *Conseil d'Etat*.

Moreover, the question is not merely of the liability of the Crown. The Public Authorities Protection Act needs to be amended and to receive a liberal interpretation. For the most part, the liability of local authorities has been on an intelligent basis since the decision in *Mersey Docks and Harbour Board* v. *Gibbs*.[30] But that decision could be developed on the assumption that a public authority owes a greater standard of care than a private person. Also, there is still the silly exception for highways[31] which produced the ludicrous decision in *Guilfoyle* v. *Port of London Authority*.[32] These reforms need legislation by Parliament and not judicial legislation. But the point is that the essential problem where an individual is injured by an administrative act is different from that raised where an individual is injured by an individual. Modern tendencies are towards the creation of monopolies either as public services of under public

[28] Page 117.
[29] Page 112.
[30] [1866] L.R. 1 H.L. 93.
[31] *Cowley* v. *Newmarket Local Board* [1892] A.C. 345.
[32] [1932] 1 K.B. 336.

control. Monopolies have the means of injuring by discrimination and deliberate oppression which are not open to a competitive system. The system of judicial remedies is not keeping pace with changes in the constitutional system. Only a court which keeps closely in touch with the constitutional changes can effectively protect the individual.

These suggestions go somewhat further than the recommendations of the Committee. But those recommendations do admit the case for an administrative court, even while formal denial is given to it on the basis of a non-existent " rule of law." An administrative judge within the High Court is an administrative court just as surely as an administrative judge outside. My argument for separation assumes only that if the administrative judge is effectively to develop this branch of the law on the basis of reforms by Act of Parliament he must be removed from the influence of some of those traditions of the common law which grew up before the development of our administrative system. It has never been suggested that an administrative court should not partake of the high traditions of independence and probity which distinguish the High Court.

Note.—In the next issue of this journal Mr. Jennings will review the " Evidence taken before the Committee on Ministers' Powers," including " Memoranda submitted by Government Departments."—EDITOR.

The Bridgeman Committee Report

By Major C. R. Attlee, M.P.

IT is with some trepidation that I have responded to the request of the Editor of Public Administration to give my views on the Report on the Post Office. As one of the most ephemeral of that short-lived race, Postmasters-General, I feel that I am intruding in submitting my views to the judgment of experienced practical administrators. They may justly entertain towards me the feelings displayed by the Indian Civil Servant to the cold-weather visitor who passes easy judgments on problems to which he himself has devoted years of study. However, in dealing on a somewhat slight acquaintance with the Post Office I am only one of many. Even more than most Government Departments the Post Office is considered to be fair game for the most indifferent shot. No special qualifications are considered necessary in the critic of postal administration, as the correspondence columns and, indeed, the leading articles of the daily Press testify.

The Report is the result of an agitation led by Lord Wolmer against the Post Office and all its works. It was alleged that the Post Office was seriously inefficient, that it was a great commercial business being mismanaged by civil servants, and that from the very nature of its constitution there could be no real improvement without drastic changes. It was suggested that the real cure for all its ills was that it should be handed over to the management of those business men whose success in providing for the material needs of civilisation is so strikingly evident at the present time. Three hundreds and twenty Members of Parliament signed a memorial to this effect and prayed for a committee of inquiry.

In Lord Bridgeman, Lord Plender and Sir John Cadman the memorialists have found a three-headed Balaam, who being called in to curse has remained to bless, for the most salient characteristic of this report is its refutation of the charge of general inefficiency brought against the Department. While admitting that some criticisms are justified and recommending some far-reaching alterations in the internal organisation and financial status of the Post Office, the Committee state emphatically that they wish to place

on record their opinion that on the whole the Post Office performs the services for which it is responsible with remarkable efficiency.

The Report is, however, not a mere pot of whitewash. The various services are examined in the light of the criticisms made. It is found that there is no serious complaint against the Mails, that the Telegraph service is efficiently run though suffering from its supersession by the telephones, while recent improvements in technique, generally ignored by the critics, are recognised. The telephone, that generator of irritation, is found to stand comparison with its sisters in other lands better than is generally supposed, while the agency duties which the Post Office performs come out with a clean bill of health. In fact it is clear that the Committee soon realised that their task was not that of saving a derelict, but of making a good thing a better.

The prevailing note of the Report is common sense and good judgment. While realising that much of what passes for criticism is uninformed and irresponsible, the Committee gives credit to the serious critic, but never forgets that administration must be judged by practical standards, and that it is unreasonable to condemn the Post Office by comparing it with some unattainable and imaginary perfection or to contrast it to its disadvantage with services operating under entirely different conditions. The members recognise, too, that the officials of the Post Office do not sell stamps to angels or provide a telephone service to connect Solomon and Job, but have to deal with a population containing various ranges of intelligence.

Thus they note " that those sections of the public which are most insistent on the services of the Post Office being conducted on the lines of commercial enterprise are not infrequently those most prone to demand services and facilities which cannot possible pay." A sentence which goes straight to the heart of any Postmaster-General. Again, when discussing the alleged defects of the telephone service, they state with much truth " that it is difficult to adopt an unprejudiced attitude towards an instrument which, if it is one of the blessings of civilisation is certainly not an unmixed blessing."

It is this common sense and practical attitude which gives the Report its value. Its weakness is a lack of interest in matters of constitutional and administrative theory and a tendency to deal only with immediate questions without considering how the decisions of to-day may affect future developments. This is particularly so in the field of finance. The two qualities are very exactly balanced when the Committee considers the arguments for abolishing the present system of a Minister responsible to Parliament and for transferring the Post Office services in whole or in part to a Public

Utility Company or Statutory Corporation. The pros and cons are hardly even set out. There is no consideration of the tendency of recent years to substitute for a Minister and a Department a body such as the Central Electricity Board or the proposed London Transport Board. The Committee does not, as was perhaps natural from its composition, discuss the future policy to be adopted towards other nationalised industries. It states bluntly that public control is necessary and right without stopping to consider whether public control may not be obtained by some way other than that of House of Commons control over a Minister and his estimates. On the other hand it administers a cold douche to enthusiasts for the " the business man " by drily remarking that its members are by no means satisfied that the management of the services by a corporation would result in the disappearance of the defects complained of. " Over-centralisation, they say, lack of imagination and failure to give appropriate representation to technical functions are faults which are to be found in the sphere of private as well as Government administration." One may hazard the view that the real reason for the rejection of this proposal is to be found in the attitude of the ordinary man in the street given by Sir Charles Harris in his brilliant article on " Decentralisation," printed in this journal in April, 1925. He said, " we probably all feel that if our letters are not punctually on the breakfast table and our telephones efficient there ought to be some one responsible Minister who in the last resort can be driven from office." I think that this is true. One of the reasons for the irritation one feels at times with corporations such as railway companies is one's impotence to form a picture in one's mind of the offender. There is little relief in damning a corporation, but where there is a definite person one can at all events kick him in imagination. The Committee brushes aside without much consideration the objection so often put forward to having a ministerial head to a department like the Post Office. It does not think that the constant changes have a worse effect than in any other office. It is unaffected by the long line of transitory Postmasters-General who are alleged to regard their office mainly as a stepping stone to higher things. In this, I think, less than justice is done to the critic. No other Minister excepting the heads of the fighting services has so large a staff as the Postmaster-General or controls so ubiquitous an organisation in such close contact with the public. In my view it is the fact that Postmasters-General are mostly birds of passage, and that the exigencies of Parliament cage them so closely in London which is partly responsible for the undue centralisation and excessive control by the secretariat which is noted by the Committee as a defect. Similarly, I think, that the Committee underrates the effect in the

same direction of the practice of Parliamentary interpellation. It is not that questions in Parliament take up a very great deal of the Minister's time or that they affect him in his decisions on policy to any large extent, but it is the fact that because the action of any postal servant may be challenged on the floor of the House of Commons, the minutiæ of administration come right up to the highest officials, diverting their minds from broad matters of policy. The effect is also, I think, felt throughout the service in a cramping of initiative and a tendency to stick too closely to the letter of regulations which prevent the evolution of a proper public relations attitude. The Committee summarises the generalized charges brought against the service as comprising an absence of the spirit of public service, a lack of initiative and absence of imagination, an absence of the commercial outlook and a failure to give proper scope to the technician. It by no means endorses these criticisms but allows that there is a substratum of truth in them. It finds the root causes to reside in the financial relationship of the Post Office to the Exchequer and in its internal organisation which is to some extent conditioned by it. Before dealing with the Committee's examination of these two causes and the conclusions to which they come as to the best means of reform which form the kernel of the Report, I will deal with their proposals concerning the telegraph and telephone services.

Dismissing the idea of the transference of these two departments to a separate body as impracticable, a decision which all who have studied the subject, including Lord Wolmer, will accept, they propose that the two services should as soon as possible be fused.

This will be welcome to the staff of the telegraph department, who are at present tied to an inevitably declining business, but will, perhaps, be received with mixed feelings by the telephone officials, who will hardly welcome being linked so closely to a service with a large, if declining, deficit.

The Committee does not differentiate at all between these services and the Mails. In this, I think, it is at fault. While the Mails are a monopoly, the telephone service is in competition for the custom of the public with the sellers of other amenities. It cannot be a mere passive offerer of amenities. It has to go out and get its customers and must endeavour to stimulate user. It must have, therefore, more of a commercial outlook than the rest of the Post Office.

In my opinion it was precisely in the department of salesmanship that the telephone administration was deficient. It was here that civil service training needed supplementing by commercial experience. I think, therefore, that, while rightly retaining these

communication services within the ambit of the Post Office, the Committee would have been well advised to have recommended some horizontal decentralisation. I should like to see a Telephone and Telegraph Board formed on a functional basis with due representation to the selling and engineering sides presided over by the Assistant Postmaster-General and endowed with considerable powers of independent action.

This would, I think, be complementary to the reform proposed in the organisation of the Post Office itself. It would make for that closer co-ordination which the Committee recognizes as desirable in the various elements involved in the provision and conduct of the service. The District Manager would under such a scheme function in the same way as the effective local head of the service as does the Surveyor under the main scheme proposed. The Board would, of course, have its separate financial head. The Board would be under the general control of the Post Office Board, but only for general policy.

If there is one thing on which every Post Office reformer is agreed, it is the urgent need for bringing to an end the system whereby the Post Office is regarded as a revenue-producing instrument and has to surrender to the Exchequer all its surplus. It has for years been the milch cow of the Chancellor of the Exchequer with a constantly increasing yield. No doubt the evidence laid before the Committee was overwhelming on the need for change, and it was a foregone conclusion that they would report against a continuance of the present financial arrangement. It is this which has militated more than anything else against reform of the Post Office from within. It has had a depressing effect on the administrative staff and has been a fruitful source of discontent among the worse-paid employees. It has delayed advance, hampered enterprise and slowed down business by subjecting the proposals of men actually running the undertaking to the control of officials of another department who necessarily look at every question from the narrow point of view of the revenue and regard all expenditure as *prima facie* an evil.

There are three points involved, the taking of the surplus, the control over detailed expenditure by the Treasury, and the constitutional position of the Post Office in relation to Parliament. The Committee deal mainly with the first, lightly with the second, and ignore the third.

The Committee's treatment of the subject is a good example of that absence of theoretical consideration which I have already noted. One seeks in vain for any discussion of the contending theories of the finance of publicly owned utilities which engaged the attention of

Mr. Hawtrey, Mr. Stuart Bunning, and others in this journal in 1926.

The authors of the Report do not debate the question as to whether it is right or wrong to use the Post Office as an instrument of taxation. They do not consider the incidence of taxation as it is paid to-day by users of the mails. They do not enter into any abstract consideration as to the respective rights of the users of the services, the workers and the taxpayers to a share in the surplus. Their test is always expediency.

They do indeed pronounce without discussion that the primary function of the Post Office is the service of the public and not revenue production, and they come to a definite conclusion that on business grounds its finance should be self-contained. Self-contained finance they define as a scheme whereby after making a certain agreed contribution to the Exchequer the Post Office should be allowed to use its surpluses, after making the necessary reserves, for the benefit of the public, the improvement of the services and the development of its business. By the public they mean the customers for the Chancellor of the Exchequer might plead that it was to the benefit of the public that Post Office customers should pay more in order that taxpayers might pay less. They obviously consider the customers of the Post Office as co-extensive with the nation. This is roughly true of the Mails but not of the telephone, which is still largely an upper and middle-class convenience.

The Committee considers that self-contained finance will give a single instead of a dual objective, will stimulate enterprise and will create a radically different outlook in the administration. There is a curious statement in support of the advantages of self-contained finance to the effect that the Post Office Savings Bank through the existence of a separate fund possesses a limited measure of financial autonomy. The Committee, while paying a very high and well-deserved tribute to the efficiency of this department seems to consider it as the result of self-contained finance. This is incorrect. The Exchequer takes some four million pounds a year from it, about half of which is really taxation of the small investor. The Department is not free from Treasury control, and its enterprise has in my opinion been seriously hampered by that department regarding it mainly as a useful means of obtaining cheap money.

However arrived at, the decision that the Post Office should be given self-contained finance is most welcome, but the question then arises as to the basis on which an agreed settlement should be come to with the Treasury. Here the Committee goes entirely by expediency. Without considering the course of payments over a series of years, it simply takes the figures of the last three years and strikes a rough

average, recommending eleven and a half million pounds a year as an appropriate sum. In suggesting this amount the Committee has really considered nothing but the present condition of the finances of the country. If the Report had been written five or six years ago, the amount recommended would no doubt have been about half this sum. With a distinguished accountant such as Lord Plender on the Committee, one would have expected a detailed examination of the composition of the surplus and some estimate of whether the amount now available is likely to be forthcoming in future years. One would have hoped for a detailed estimate of the elements which should compose the contribution to the Exchequer by a State monopoly. These elements are indeed indicated. It is suggested that interest on capital invested, income tax, payment for the services of the National Debt Commissioners and something of the nature of a royalty for the monopoly value should form the basis of an agreed settlement, but their evaluation is postponed for three years.

This is undoubtedly the weakest part of the Report. The Committee has really evaded the whole issue of amount, and in so doing have not brought that finality into the settlement which they postulate as desirable, as the essence of self-contained finance. There is indeed nothing to prevent a hard-pressed Chancellor of the Exchequer three years hence again demanding an increased yield from the milch cow. There is nothing but the needs of the Exchequer to cause the seettlement to be based on the last three years, while there is much to be said against it. The surplus is largely due to automatic reductions in wages consequent on the fall in the cost of living and to low prices of raw materials. Prices are abnormally low to-day, and it is the avowed object of the present Government to raise them. It is, therefore, as unjust to the Post Office customer to fix a basis now as it would have been to the Exchequer to have done so in the high-price period after the War.

I think the right course would have been to have laid down the amount or at least the basis of the amount, which the Post Office ought to pay having regard to the elements noted above, and to have treated any further sums which financial stringency compelled the Exchequer to exact at the present time above the agreed sum as being special taxation to be considered with other taxes by Parliament when the time arrives to determine on remissions.

It is curious that the Committee in its consideration of finance, except as regards the Savings Bank, has considered the Post Office as a financial unity. If recognises indeed the different financial circumstances of the various services, but it does not carry the principle of self-contained finance into the separate services. It is an interesting question as to how far losses on one department should

be paid for by the gains made in another. Much depends on the extent to which the customers of the one are the same as those of the others. It is a variant of the old municipal question as to whether the rider in the trams should be subsidised by the motor-riding rate-payer or should contribute out of profits to pay for the roads used by him. The Committee does not discuss this point.

The proposals of the Committee that henceforth the relationship between the Post Office and other departments from which it receives or to which it renders services should be on a contractual basis are sound, and the rather more vexed question of the obligation of the Post Office to use the Office of Works and the Stationery Office is dealt with on common-sense lines.

The Committee recommends some relaxation of Treasury control over matters of necessary administrative expenditure, but do not indicate its extent. It is rather difficult to follow its reasoning on this point. Self-contained finance is recommended in order to obtain a new outlook. A financial settlement is to be arrived at whereby the surplus of the Post Office is to be at its own disposal, but still apparently a measure of control is to be retained by a Department which has ceased to be concerned with anything but its tribute. One presumes that the retention of Treasury control is due to some vague idea of insisting on economy, but the Treasury is not really concerned with economy but with parsimony. The kind of financial control suitable to a spending department is not really applicable to a business. I think that the only position for the Treasury *vis-a-vis* the Post Office is that of a trustee for debenture holders. So long as its contribution is not endangered it should have no right of interference in the details of business. I think that the Committee has under-estimated the evil of Treasury control which lies not so much in its exercise as in its existence. As a matter of fact the real way to economy is indicated elsewhere in the report, which is the proper use of the Department's own financial staff, not as holders of *post mortems* but as measurers of efficiency. Internal financial control is more effective than external, because the pressure is continuous and applied all round instead of at a few points.

The Committee has not considered at all how this change in the financial status of the Post Office is going to affect the question of Parliamentary control. Hitherto the House of Commons has dealt with the Post Office estimates as if they were those of any other spending department which must be paid for out of the products of taxation. If it is clearly recognised in future that the Post Office lives of its own there is no reason why its estimates should be submitted to Parliament. It is a pity that the Committee while still professing its faith in Parliamentary control should not have broken

new ground by suggesting a means whereby Parliamentary criticism could be made more effective and constructive. The public have a right to be heard. The advisory committee is not really a very useful body. I am inclined to think that committees of users in the provincial areas meeting with the responsible provincial officers from time to time would be a better device.

Perhaps the most interesting part of the Report is that which deals with the internal organisation of the Post Office. The main criticism of the Committee is directed to the over-centralisation of authority which is in its opinion a root cause of such defects as exist. I think that this criticism is justified. The over-centralisation has three phases, geographical, functional and departmental. The Committee is concerned mainly with the first two.

Apart from Treasury control and Parliamentary interpellation, which are powerful centralising causes, the nature of the service, its dependence on exact synchronisation in the working of the Mails and the very large staff employed make a certain degree of centralisation inevitable. It is, however, the position of the Secretariat, unparalleled in any other Government Department, which the Committee holds to be the effective cause. There is a gulf between the centre and the provinces due to a large extent to lack of transference of personnel. The members of the secretariat for the most part begin and end their careers at the General Post Office. " They have," says the Report, " a quite inadequate opportunity of acquiring any thorough training in or experience of the actual executive work of the Post Office. They spend their official careers not merely in administering but to a considerable extent in controlling the execution of services of which they may have much theoretical but little practical knowledge." On the other hand the highest provincial officers, the surveyors and postmaster-surveyors with a wealth of administrative experience do not penetrate to St. Martin's-le-Grand. This point struck me forcibly when in office, and I contrasted it with the sound Army rule that a staff officer must first have proved himself a good regimental officer and with the practice of varying service on the staff with tours of duty in the commands. It is this separation of cadres which makes for centralisation, because the provincial officers are of lower status than those in the secretariat.

Functional centralisation results from the exceptional position accorded to the secretariat. No executive department can give an instruction to another, nor can it do anything through its own officers for which it has not secretarial authority. The engineering and accounting branches are in a definitely inferior position. The result is that engineering considerations are given too little weight in decisions and financial control is in the nature of criticism after the

event. A Postmaster-General will find that the stream of advice and opinion from which he must draw his decisions comes to him filtered through the secretariat. The technical views put before him will in the main be those which have commended themselves to the Secretary's office.

Departmental centralisation is expressed by the Committee as a failure to observe one of the fundamental principles of organisation, the distinction between the administrative and executive functions. The Secretariat is concerned not only with the framing and formulation of policy, but also with the conduct of the daily business of the Post Office services, for which it is unsuited, both by training and experience.

The Committee proposes to break down the division existing between the secretariat and the provincial staff on the one hand, and between the former and the rest of the staff on the other. It is suggested that the entrant to the administrative class should spend the first years of his service in the provinces, and should then be transferred to the centre only if he shows promise and after careful selection. He is after a period of service at headquarters to go again to the provinces in a more responsible position. This is, I think, very sound. It will probably result in the long run in promotion to the administrative class being entirely from within the service. It is also recommended that the highest positions on the administrative side should be open to the engineer.

The Committee proposes to create at headquarters a functional Board presided over by the Postmaster-General, comprising with the Assistant Postmaster-General four or five members having authority over General Operating and Supply, Engineering and Research, Finance and Personnel. The senior permanent member of the Board would be given the title of Director-General. The Postmaster-General as Minister responsible to Parliament must have the power of overruling his colleagues. The duties of the Board are those of considering and formulating policy and discussing and deciding broad issues of administration. The members are to be freed from such onerous departmental duties as would interfere with their effectiveness as members. Thus the correlation of the different functions will now take place through the Board instead of through the Secretary's office.

I may perhaps be pardoned for hailing this proposal with enthusiasm, as I had formulated an identical scheme before I left office and had taken preliminary steps to bring it into operation. The Committee has rightly decided on a functional basis instead of a departmental. It was this error which caused the failure of Mr. Kellaway's attempt in the same direction.

The Committee recommend that in order to enable the district

organisations to carry out the general policy prescribed by Headquarters all the activities, administrative, financial and technical, must be co-ordinated at each appropriate stage. The Committee visualises the different districts in competition with one another in efficiency and using the instruments of financial measurement for comparison. The Surveyor, now to be called the Regional Director, is to have an organisation reproducing in miniature the Headquarters Board, and is to exercise jurisdiction over all the functions appertaining to the Post, Telephone and Telegraph Services.

The Committee is not very specific on the application of decentralisation to the various services. It is not clear how far the Telephone and Telegraph Department will be free to develop without detailed interference. On the principles laid down one would suppose that at the head of that department and in the area of each district there should be the same co-ordination of functions as in the service generally. The general scheme of administration proposed by the Committee obviously owes something to the precedent of the War Office. In my experience a functional Board works well, provided that the members are not over-burdened with detailed departmental work. It would be well if the Government would ponder this Report and apply some of the principles laid down therein to a reorganisation of the Cabinet system, which sins against the light in many respects, but not least in failing to provide for the separation of the functions of considering major strategy and making decisions on detailed points of execution.

Two points vital to the efficiency of the undertaking have, in my opinion, received less attention than they merit. The first is the need for adopting a more cordial public relations policy. I think myself that there should be a special officer at Headquarters and in each region charged with ensuring the observance of this. The second is the securing the highest efficiency from the staff. This can, I think, be done only by close co-operation, by taking the staff into the confidence of the administration and by making them feel a personal interest in the success of the service. I am far from saying this does not exist at the present time, but I consider that with the removal of some grievances and with a greater mutual confidence much more could be achieved. A contented and enthusiastic staff is essential to the success of an undertaking which comes so closely in contact with the general public.

In conclusion I think that the Committee is to be congratulated on having come to a sound decision. I hope that its main recommendations will be adopted, and that the Report will put an end to that denial of credit and that unfair and uninformed criticism which has, as the Committee notes, injuriously affected the organisation.

The Post Office Mystery[1]

By G. H. Stuart Bunning

OUR first objection to the Bridgeman Report is that the title is misleading. It is not a report on the Post Office at all, and its correct title would be "A Report as to whether the Post Office should be placed under semi-public or private management, with sundry divagations as to telephones and finance." The title would have admittedly been lengthy, but it would also have been honest and the public would have known what to expect for its ninepence. Indeed, we think the Committee might have borrowed a hint from Shaw's description of "The Apple Cart" and styled the Report "A Postal extravaganza with a Telephone Interlude." The reason why the Report is of little value is interesting. Andrew Fletcher wrote that the law to make it a mystery and a trade was wrapped up in obscure terms, adding that it was founded in justice. We do not know what is the foundation of the Post Office, but it knows the advantage of obscurity.

A profit is a surplus, a loss a deficit, and if any lessening of charges takes place it is a concession, as though there was some Postal Deity who every now and then conferred favours on unworthy mortals. Nor is this done unskilfully. Considerable reductions of charges were made in 1897, and the sacred name of Queen Victoria was invoked, the reductions being announced as in honour of the Diamond Jubilee.

This is to make the Post Office a mystery, and it is the one thing in which the Department has been consistent. Prior to Rowland Hill, the mystery consisted in the public getting letters at all, but Hill changed its character, though not its nature, for by a magician's stroke, people not only got their letters but got them quickly and cheaply. Ninepence for fourpence was for once in a way true, indeed it was eightpence for a penny.

Hill underwent a species of canonisation, for no one understood how he had brought about this miraculous change, and great though the reformer was, he had not the gift of explication, indeed he never

[1] Report of Committee of Enquiry on the Post Office, 1932. Cmd. 4149. H.M.S.O., price 9d. net. Post Office Reform. Viscount Wolmer, M.P. (Ivor Nicholson & Watson.) 6s. net.

used one word when ten would do. He was in fact a born Post Office man. His great idea was to give the public the best and most efficient service at the cheapest possible price, and so strong was his personality that this policy existed till 1919. Since that year the mystery still remains, but the mysteriarchs have changed it, and now the public gets the worst possible service it will stand at the highest possible price it will pay. We do not wish to be misunderstood. We do not say the Post Office could not be worse. It could, and what we are writing here is in the faint hope of preventing any worsening; but we do say it is definitely bad and that the Bridgeman Report, even if accepted and acted upon, will not make it better. If our statement that the Post Office is a mystery be accepted, it may be asked how it is maintained, for there have been many inquiries into the Department, and the moment a mystery is inquired into, the mystery goes. This is just where the skill of the Post Office comes in and where old Nick Machiavelli is shown to be a raw apprentice. Ask any postal official whether his affairs are ever inquired into, and he will open his mild blue eyes in wonder and inform you that the Post Office is hag-ridden with inquiries. Royal Commissions, Select, Departmental, hybrid and other committees are always sitting, and he will add, with modest pride, that they never find anything seriously wrong. He will be quite right. The Post Office has discovered the great truth that if you want to hide anything the best way is to have an inquiry. Mr. Dooley once said that were he President Kruger he would have given votes to the Uitlanders, but would have appointed a reliable man to count them. The Post Office can give Dooley points and a beating, for to misquote Andrew Fletcher again, its says, " We care not who makes the inquiries of a nation, so long as we make the terms of reference." It has sometimes been suggested that a private word is whispered into the ear of the chairman, but this we do not believe, for such a method is both clumsy and unsafe, and the Department is not clumsy. Usually a Post Office man is appointed as secretary, but there are distinct advantages in an outside appointment. " Appoint whom you like," says the P.M.G., " I have nothing up my sleeve," and a gentleman from the War Office, steeped to the eyes in Cæsar's campaigns and the Esher Report is the ideal man. Whatever he may know he cannot know anything of the Post Office, and so, even accidentally, will not give away any of its secrets. If anyone thinks this is overdrawn let him read the terms of reference of the latest committee and the report which has flowed from them. " To inquire and report as to whether any changes in the constitution, status or system of organisation of the Post Office would be in the public interest." Terms of reference are to some extent

what committees make them, but except in one instance the Bridgeman Committee stuck to the foot of the letter. The question raised by Lord Wolmer, in which there was a languid public interest, is there and is dealt with in the Report; there are some remarks as to efficiency, about which we will say something later, but only on telephones does the Report say anything of charges, indeed, " The restoration of penny postage is a matter which we feel falls outside our competence."

It will be clear that we come to the consideration of the Report with an adverse bias, and this was increased by the fact that the Committee sat privately. The Post Office is a public institution, indeed, in a paragraph which, were Mr. Punch to read Reports, he would immortalise as " another glimpse of the obvious," we are told " no other organisation is in such continuous, varied and intimate contact with the daily lives of the public." That being so, the inquiry should have been public. We have only seen summaries of the evidence, but it is a well-known fact that witnesses are much more careful in public than in private, and although cynics say this works both ways, the advantage lies in a public hearing. There is also an element of inconsistency in their praising the House of Commons as necessary for the public ventilation of postal grievances, and then shrouding themselves in privacy. We understand that certain people were invited to come before the Committee and others pushed themselves on to it, but these are not satisfactory ways of getting evidence.

In paragraph 17 the Report says there is little criticism as to efficiency as such, going on to say there is some as to the penny post, earlier and later deliveries in suburbs and " dormitory " towns. This seems a good lot to go on with, and much more would have been received had the inquiry been public, but the Report at once sidetracks penny postage by saying it was not within the Committee's competence. If that means anything it means that rates were not included in their terms of reference, but they depart from this attitude in respect to the telephones, for they suggest a reduction of rates even if this causes an initial loss. We hold that had the Committee chosen they could have gone into the question of rates, but if they could not, it only proves the skill of the Post Office. Does any reasonable being believe that over 300 Members of Parliament asked for an inquiry as to whether the Secretary should be called Director-General or Deputy Chairman, or whether Surveyors would be more efficient if they were styled Regional Directors with rather more power than they now possess. It is right to add that Lord Wolmer and his friends have to thank themselves for their plight.

Having a perfectly good case for a full inquiry, they chose to be involved instead of simple, to be divided among themselves as to the remedy, and to suggest remedies which were extremely controversial and, in this, we agree with the Report, impracticable and undesirable.

We do not share the orthodox Post Office view of Lord Wolmer. We believe him to desire Post Office reform most sincerely, and it would not surprise us to learn that he came to his plan in sheer despair of reforming the Post Office otherwise, but here we think he was wrong. He was right in demanding inquiry. He was wrong and with his experience, surprisingly wrong, in not insisting on a public inquiry, which should have been both simple and comprehensive. The Post Office, for example, should have been confronted with the "Post Office Guide" of June, 1914, and where changes for the worse, either in rates or services, have been made, challenged to justify them. That would not have exhausted all the subjects into which the public should look, but we are confident it would largely, if not entirely, have restored the 1914 services to the public, and heaven knows that would have been something to be thankful for. The tragic thing is, that the present defective Post Office service is the penalty of patriotism. Restrictions of one kind or another were cheerfully borne from 1914 to 1918. They were necessary to win the war. Unhappily, two things were discovered, the docility of the public and the fact that it was not only disorganised but incapable of organisation. The result was the Department went as far as it dared, and indeed it went a little too far, for be it remembered, public protest has succeeded in getting back a few of the services which were taken away. Now, the Post Office has actually got an independent committee to approve all this and to lecture the public on its disrespectful attitude to the Postmaster-General.

One of the engaging features of the Report is the reiterated reproof of the public for grumbling. Paragraph 4 says that much criticism is uninformed and irresponsible, though it adds magnanimously that much is genuine and authoritative. Paragraph 16 tells us there is general but ill-defined dissatisfaction. Charges of positive discourtesy are exaggerated, and anyhow the public is sometimes rude. The Committee doubts whether the public fully appreciates how high the standard of Post Office efficiency is. "Criticism is easy and complaint more vocal than appreciation." Not infrequently the critics of the communicative services are those most prone to demand unprofitable services and facilities.

The attitude of the public to the Post Office leaves something to be desired, and telephone subscribers are told to remember the occasions on which they have been well served when on rare occasion

they have reason for complaint. This is a new reading of counting your blessings one by one, which may have repercussions in unexpected quarters. When a celebrated firm of actuaries is called in and finds a defaulting cashier, he will look up in pained surprise and bid them remember that for twenty years his accounts have been straight, so why should they worry him about a single miserable defalcation. Of course, there is some truth in these statements, but what purpose is served by enshrining them in a report, we do not know. The Committee's duty was to examine the complaints and say whether there was anything in them. The effect of the foregoing is that there is not, and this is confirmed by the various statements as to the work of the department, where most of the superlatives are employed and, indeed, the Report almost reaches the language of hyberbole.

Services are performed with a high degree of efficiency. They merit high approbation. The " Post Office staff " compares favourably with that of comparable outside firms. The standard of efficiency is very satisfactory. It is true, they add, that there is room for improvement, but how can there be if the above is true?

Then we are told in a truly remarkable paragraph, that we cannot demand luxuries at the same price as necessities. Why not? A good many luxuries are in fact as cheap as necessaries. We suppose this really means that unprofitable services should not be asked for and, of course, such demands are made, but the Committee might have explained how the public can know whether a service is profitable. However, the point is of no great importance, for the complaint the public would make if it were organised is that the Postmaster-General charges high prices, in many cases gives poor service, and then walks away with £10,000,000 profit. This is profiteering in its worst form. Even in these days of combines and trusts, the public has some remedy when private enterprise profiteers, but it has practically none against a Government Department, protected by being above the law, by tradition, and by the skill of the secretariat, a body for which our admiration is little less than that of the Bridgeman Committee.

We spent some part of our time in the war, punishing poor wretches who charged a halfpenny too much for goods, but the Postmaster-General loots ten millions and flaunts it in our faces. The profiteering tradesman in a slum is in danger of prison. A profiteering P.M.G. is in danger of a peerage. Postmasters-General have more than once expressed a hope that penny postage may be restored, and Sir Evelyn Murray, in " The Post Office," well calls this " a pious hope." The present P.M.G. is no exception to the rule, but shortly afterward he announced with great pride that the

Post Office surplus was the biggest ever, adding casually that no one must expect penny postage.

Whether Ministers are justified in expressing hopes which they ought to know are not likely to be fulfilled is a delicate question of political ethics we will not pursue.

Five years ago, Sir Evelyn told us that the Post Office surplus could carry penny postage. Since then costs, especially in wages, have gone down enormously, but with a surplus far greater than in 1927 both the high charges and the bad services are still with us. If the Bridgeman Report is adopted they must remain for three years —as a careful perusal of paragraphs 62 to 73 clearly indicates, indeed they may be with us till the Greek Kalends unless the mob hangs a Postmaster-General " just to learn him." When we are told by the Secretary of the Department that high charges actually kill an important branch of commercial enterprise it is surely time to take notice. High charges and bad service are killing to-day, if they have not already done so, what was a profitable trade in country places. Lord Wolmer says almost jocularly that he does not advise anyone to send eggs by post. It is no joke! We saw a pathetic circular a while ago from a lady who was trying to build up a postal trade in poultry, eggs and cream. She wrote saying she must discontinue the supply of eggs, for no matter how carefully they were packed the loss by breakage was so great that she was losing both money and prestige. The present method of dealing with parcels was introduced some time before the war, and what is rarely realised, means extra cost in more ways than one. A firm was asked to send a walking stick by post. Some time before the war, the postage would have been threepence, for the Post Office recognising that a stick is brittle, would have attached it to a " protector." Nowadays, this appliance is obsolete, and the cost of parcel post having gone up to sixpence, an extra threepence is required to make the package reasonably secure from breakage, or ninepence in all. No one need talk nonsense about " postal navvies." It is the method which is wrong, and about which the postal navvies are eloquent on occasion.

This is a digression and we must deal with a weight which obviously sat heavily on the Committee. It was the Chancellor of the Exchequer! Every taxpayer knows to his sorrow that the Chancellor needs money and lots of it, but we hold that was not the business of a Post Office Committee of Inquiry. Their task was to say what was required to make the service really efficient and leave the Chancellor of the Exchequer to fight his own battles in the only place where he can be effectively encountered. Nor are we moved by the implied suggestion that a Postmaster-General is entitled to whine that he cannot help either himself or the public, because there

is a big hulking fellow round the corner, called the Treasury, who always takes his little bag from him. That may be so, but the P.M.G. need not acquiesce quite so readily. These observations arise out of what is implied in the Report rather than written, and we propose to examine some of the paragraphs in detail.

We are not impressed by the statement that the position of the Post Office Secretariat has no parallel in any other Government Department for no comparison of the slightest value can be made with any other Department. The Post Office in its main function is just a big shop, with branches everywhere, selling standard goods, at standard rates and in a standard way. In such a business there must be a centralisation of the highest authority and the greater freedom the Report proposes for officers " in the field " will, we think, in practice be illusory for neither the public nor the staff will forgo the right to appeal to Headquarters.

We entirely agree with the idea of a functional Board, but we entirely disagree with the suggested degradation of the Secretary, for that is what it amounts to.

However scanty we may think the Report in ideas it reveals a great fertility in inventing titles. The Secretary is to be " Chief Executive," " Deputy Chairman," " Director-General," and anything else his fancy may dictate; he is no longer to be the permanent head of the Post Office for it is explicitly laid down that his position relative to the other members of the Board is that of *" primus inter pares."* We believe this musty tag refers to the uncomfortable privilege certain noblemen enjoyed of wearing their hats in the presence of Royalty and that is about its only use, for no man ever did or ever will succeed in being first among equals. He is first or he is not. Under the recommendation, the Director-General can apparently be outvoted on the Board or individual members can go over his head and perhaps behind his back to the Postmaster-General. This sounds an excellent plan for securing quick changes in Directors-General but not for securing harmonious work and we think the Secretary must still be, under the Postmaster-General, the real head of the office. Incidentally this first among equals business seems somewhat contradicted by the recommendation that members of the Board are to be responsible " through the Chief Executive " for it can scarcely be intended that he should just be a funnel.

We are in hearty agreement with the suggestion that the Secretariat should have field experience. We should love to see the Secretary, who is a big, hefty fellow, pushing a parcel barrow and would go a long way, at our own proper charges, to see the sight. Seriously, the idea is excellent and if carried into effect we shall not again have a high official tell a Select Committee that a postman

cannot know when there are valuables in an unregistered letter, a matter on which any practical man could have put him right, or if a comparison is made with Australia, a Committee being solemnly told that in Australia postal servants do not see a white man for months, an actual statement which evoked the caustic rejoinder that the high official had evidently been reading the voyages of that ingenious mariner, Captain James Cook, but that in the 20th century a safer guide was Thomas of that ilk.

Section 17 must always stand as a monument of what the Post Office can do when it really sets out on the job, for it is pure department from beginning to end, especially the priceless third paragraph, of which the first sentence as to improvements in the scale of deliveries may be passed over as meaning nothing, but the remainder means only too much for the general welfare as it actually contains a veiled threat that if we are not good, further reductions of deliveries may take place, for we are told that it is possible some existing deliveries might be found on investigation to be more costly than is warranted by their value. Value, to whom, by the way. Well the warning is there all right, and it is to be hoped that the public will heed it. The Committee say they find little evidence of any widespread and genuine desire on the part of the public for the restoration of the " somewhat lavish " scale of deliveries obtaining before the war.

As little pains were taken to get evidence and some to make difficulties in the way of getting it, we are not surprised that little was obtained. We will venture the opinion that had a questionnaire been issued to the many large towns in the country asking whether pre-war deliveries should be restored and, if so, to give reasons, the Committee would have received an overwhelming number of replies in the affirmative, together with extremely cogent reasons for the answers.

The only clue as to the evidence they did obtain is contained in paragraph 7, which tells us they took " such evidence as appeared likely to assist us in our task."

We are, however, more concerned with the words we have put in quotes, " somewhat lavish " scale of deliveries, which is a variant of the old Post Office view that the public is pampered. We pass over the ineffable impudence of both phrases to ask a simple question. Lord Wolmer says—and has not been contradicted—that hundreds of deliveries have been withdrawn and never restored. Is it to be understood that before the war, a Surveyor was an incompetent good-natured person who said every morning, " Ere I lay me down to sleep I must give somebody a delivery he does not need."

Every Post Office man knows the answer. A request for a new

delivery was carefully looked into and only granted when it was in the public interest. It was true that the realisation of a big profit was not insisted upon, and this is the difference between the principle of then and now.

Obviously also occasions might arise in which the service proved more costly than was warranted by the public convenience, but these were few and speedily remedied; but to suggest that hundreds of deliveries have been legitimately withdrawn is arrant nonsense or worse. The last sentence of this amazing paragraph must be quoted in full.

" We believe that the Post Office are fully alive to the necessity of meeting the legitimate requirements of the public in specific cases, so far as financial considerations permit."

It will be seen that the Post Office is never to anticipate a public service of any kind. Legitimate means what the Department thinks legitimate, specific means anything the reader likes, and these two hurdles being got over, the Post Office will decide whether " financial conditions permit." Incidentally, the Report makes financial considerations more onerous by its recommendations.

Well might Rowland Hill ask, in a famous outburst, " Does the Post Office exist for the public or the public for the Post Office? " This is practically all we get about the most important branch, save a curious paragraph which suggests that a higher collective rate of sorting can be obtained with a lower individual output, a conclusion which we admit is utterly beyond us. It certainly does not reply to Lord Wolmer.

The Telegraph Service gets a little more attention mainly because the Committee desire to amalgamate the service with the Telephones, a course for which there is much to be said, but there are some points the Committee might have explored but did not. They tell us that a large part of the profit on telegrams in the United States is derived from the night-letter telegram system, which is practically unnecessary in this country, but that apparently means that a small profit is derived from ordinary telegraph work, while we actually lose about a million a year. What is the reason? The Report does not tell us, and if a Post Office man is asked he will moan, " The telephone, my boy, the telephone." This is not a sufficient answer, and we believe much could be done to make the telegraph service more efficient.

The rates may be unremunerative, but we are not convinced that a reduction would result in a loss. An increase of a hundred per cent. on the pre-war minimum can hardly encourage traffic, while the fact that a shilling has to be paid for fewer words than can be got on a penny post-card and that the latter will often be delivered

in little less time than the former and, even sometimes with it, may reflect credit on the postal system, but is a reflection on the telegraph. The telegraph delivery service in country places is definitely bad. In towns it is not as good as it should be, because the Department, confronted with a difficulty as to boy labour, found the parents of the boys more vocal than telegraph users and so worsened the delivery system and reduced the number of boys.

Then there are places, even post offices where one cannot dispatch a telegram. One of the Service journals drew attention to the difficulties of sending telegrams when on a railway journey and even at stations where there are telegraph offices, they are often difficult to find and always dingy when they are found, though this is presumably the fault of the railway. One is sometimes told in a post office that it is not a telegraph office, but the difficulty can be got over by paying twopence extra for the message to be telephoned.

The procedure is precisely the same as at a telegraph office. The message is sent by phonogram, but the customer has paid twopence more, and this is because the Post Office pays a little more to a telegraph sub-postmaster than to a non-telegraph one. The delivery of telegrams by telephone is improving, but is far from satisfactory, especially in private houses and, in any case, the letter of confirmation should be expedited. At a West-End office a telegram, taken on the 'phone by an experienced clerk, came ostensibly from a place which did not appear in the Postal Guide and the message itself was unintelligible.

Ringing up the phonogram room the addressee was told that it was impossible to search the telegrams, but the confirmatory letter would arrive in due course. When it did, everything was clear, but in the meantime inconvenience had occurred and some small expense had been incurred. In a more serious case a large firm received an unintelligible message on Saturday morning. Telephone inquiry elicited the same reply that the confirmatory message was on its way. It was delivered by post on Monday morning and the firm claimed that through the blunder it had lost a contract of some thousands of pounds. No redress was possible, but let us be just even to the Post Office. It offered to refund the cost of the telegram! It may be thought that in such a case it is incredible that the Department can escape responsibility, but it not only can but does, and any one who reads the Post Office Guide or the Telephone Directory will find that the Post Office disclaims any liabilities for any fault whatsoever. No matter how gross or even wilful the error, no responsibility can be placed on the Post Office and no compensation obtained. It would not be true to say that private enterprise has never tried to dodge responsibility for its own mistakes, and the Courts have usually made short work of the matter, but the Post-

master-General can only be got to the Courts by machinery which is too costly for most of us and incredibly cumbrous. It may be objected that the Post Office does actually give compensation. This is true, for the department simply dare not be quite as bad as its rules and the language of the Report, quoted on another occasion, admirably describes the Post Office system of compensating the public. The department must be satisfied that the demand is " legitimate," that it is " specific," and then compensation, the amount of which is entirely decided by the Post Office, is granted if " financial conditions permit," *i.e.*, it must not make a hole in the surplus.

As has already been pointed out the Telephone section departs from the principle of saying nothing about rates, for though the language is cloudy, the recommendation is that the service should be cheaper, even though reduction of charges entails an initial loss.

We agree, but there are a number of things about the telephone over which we are curious and can get no light from the Report. We suppose the fact that the rental of a telephone has to be paid in advance can be justified, but we are not so sure about the minimum of a pound which every subscriber has to put down to cover possible calls, for this means that the P.M.G. has a huge sum at his command on which he pays no interest. Private enterprise encourages customers to put money on deposit, but we understand that some small interest is paid or some other advantage accrues to the depositor. The Post Office pays nothing, and the interest alone comes to many thousands a year and is an indirect increase of the telephone rental. It is possible that this can be justified, but we can see no justification whatever for a detail in the accounting system.

It is convenient to the Department to send accounts quarterly, and no one can complain that the most convenient plan is used, but some customers prefer their accounts monthly, and the Department charges them four shillings a year or sixpence each for the extra eight accounts. The only parallel we know is that of the innkeeper who, when asked why he had included ink and paper in his account, blandly pointed out that those materials had been used in making out the bill. We wonder what Sir Kingsley Wood would say if in the event of his asking his grocer to send his bills more frequently that worthy stuck sixpence extra on each of them. We do not really wonder, for Sir Kingsley would promptly go elsewhere, but there is only one Post Office.

The department would be an ideal lodging-house keeper, for it would add " Cruet, 2s. 6d.," without a blush. It has, however, neglected one form of revenue. Ingress to head offices is free, but a tidy little sum could be obtained by making it impossible to open

the door without putting a penny in the slot, and the Post Office could then be truly described as a public convenience.

The charge of eight shillings a year for the new hand microphone is a sheer ramp. We are informed that it costs about ten shillings to make and instal and its maintenance for ten years less than another ten shillings. In ten years, however, the subscriber will have paid four pounds, and the charge is in effect a raising of the telephone rental by an appreciable sum. Where the appliance is used on extensions the increased rent is actually in the neighbourhood of 30 per cent. If this is not profiteering, what is?

In paragraph 43 the Report says that special salaries for special posts is possible with Treasury consent. Of course it is. "Who deniges of it, Betsy?" What the public would like to know is whether that consent is given, and a short account of the applications to the Treasury in the last five years and their fate would have been information of value. As it stands the sentence is worthless. Marconi is an old story now, but an account of how the Post Office lost the services of that great genius would have been illuminating as to Treasury methods.

While we entirely agree with the Report that the Government should retain control of all the Post Office services and that for the most part it should be a monopoly, paragraph 60 strikes a shrewd blow at these principles, for in praising the Savings Bank the Report gives as the reason for its efficiency that it is in open competition with outside bodies. But it would be unfair to stress an occasional inconsistency. More important are the financial clauses, with most of which we are not qualified to deal, though they seem to us to clarify Post Office finance. Paragraph 68, recommending that the Post Office should pay over £11,500,000 a year to the Treasury for the next three years, and after that should retain half of any excess fills us with amazement, and not less amazing is the attitude of Post Office people who say that at last the Treasury old man of the sea has been shifted. The recommendation actually fixes Treasury control more firmly than ever. The late lamented Mr. Shylock had a good case for his pound of flesh and was choused out of it by a designing female. The Treasury having no case at all has manœuvred the Bridgeman Committee into making one for it.

The root idea, which is excellent, is to be found in Sir Evelyn Murray's book, and we wonder what he thinks of the translation. The catch is to be found in the fantastic figure which has been fixed, a figure which can only be maintained by over-charge and under-service. Freedom is only a word and the Treasury will no doubt give much freedom to the Post Office, but it will see that it gets its money and that means strict control. We are not oblivious of the calculation of the Committee that there will be a considerable sum

left over, but this we doubt, nor are we unmindful of the various freedoms they recommend, but after all it is the finding of so huge a sum that matters. The Report says the amount should be reviewed in three years, which as we have pointed out postpones any reductions of postage for that period, and it also works in a different way from that we have seen suggested by too jubilant Post Office people. The Treasury will be free to demand a larger contribution, and the Treasury is not exactly shy in making demands on the Post Office. We conclude by saying the Committee has left undone much that it ought to have done and done much it ought not to have done.

We have left ourselves little space to deal with Lord Wolmer's book, but we do not understand the abuse showered on that gentleman.

It may be that he should have said the things he says now while in office, though there are obvious practical difficulties in this course, but anyway it seems wrong to us to revile a sinner because he comes to repentance, and Lord Wolmer is by no means the first politician who has kept silent in office and let himself go when out of it.

We have said that we think his methods were faulty and his remedies wrong, but why some good friends of ours should vilify him so much when in fact much of what he says is what they say day in and day out we do not know, and to borrow a phrase from the Report it seems a case of not seeing the wood for the trees. Besides we are not able to turn the laws of evidence topsy turvy. Three estimable gentlemen study the Post Office for a few months, interrupted, we believe, by a pleasant incident in the life of one of them, and pronounce that all is well or practically so.

Lord Wolmer, with as many years daily work in the department says it is not, and produces a mass of evidence to prove his point. If the position were the same in any ordinary walk of life, which statement should we take, especially when so much of Lord Wolmer's evidence lies open before us.

What is required is a complete public inquiry into the Post Office. All the good things in the Bridgeman Report will be found, but it will also be discovered that the principles of Rowland Hill have been forgotten and that for a number of years the Post Office has been going backward. When Lord Wolmer can state truly that in many respects the service is worse than it was twenty or thirty years ago, he is not answered either by abuse or even some small measures of reform.

These do not reach the root of the trouble, and quoting again from a Service journal, " The job of the Post Office is to provide cheap, efficient and readily accessible communications." At present it does not do its job.

Some Problems of an International Civil Service

By H. B. Butler, C.B.

(*Deputy Director, International Labour Office*)

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FOR one who has been a Civil Servant throughout his professional life and who is still proud to bear the title, though now seconded from Whitehall for nearly twelve years, it is a special pleasure to be invited to address this Institute. Its existence is, I take it, founded on the belief that administration is as much an art exacting special aptitudes and careful training as the arts of the lawyer, the doctor, or the teacher; that it requires a technique and a method of its own, which cannot be acquired in a day even by the omniscient "business man," who is popularly supposed to be better fitted to administer than the civil servant who has devoted his career to practising the art of public administration. If I ever had any doubts as to the need of developing special qualities and a peculiar habit of mind in public officials, they have certainly been completely dispelled by my experience of international administration. Discipline, orderliness, punctuality, attention to detail, capacity for organisation, all these are the commonplace but indispensable factors in success in public service or in private business alike. Without them no office can hope to function with smoothness and efficiency. But beyond these more or less mechanical attributes the public servant is called upon to possess other more difficult qualities. The most highly rationalised department, equipped with every perfection of mechanism and organisation, will nevertheless fail in its mission unless it is animated by a consciousness of its purpose as a part of the machinery of government and of its duty to the public, from which government derives its mandate. I venture to think that the British Civil Service owes its reputation not so much to the attainment of an eminent degree of precision and efficiency (and despite all the jibes of the cartoonists I should certainly not dispute the

reality of its achievement in that direction), but rather to its having developed a strong sense of its duty to the democracy which it serves, a clear comprehension of its relation to the Legislature and the Judiciary, a loyalty to the State as such, which gives it a strong corporative spirit comparable to that of the Navy and the Army. It is this *esprit de corps,* which is really essential to the success of any great public service and which alone can preserve it from the temptations and pitfalls that proximity to politics might otherwise render scarcely resistible. Ultimately the proof of its success does not lie in spick-and-span efficiency, in the answering of letters by return of post, in the pluperfection of registry systems or in the elaboration of forms of unequalled beauty and complexity. The real criterion is the confidence which it inspires in the public in its fairness, its integrity, and its whole-hearted devotion to the national interest above and beyond all considerations of politics. Only so long as it deserves that confidence from all political parties and all sections of the community will its authority remain respected and intact. What is true of a national service is equally true of an international service, and to-night I want to attempt to illustrate this truth by describing what, as I see them, are the real functions of the international civil service which is being built up at Geneva, how it is being staffed in order to fulfil them, and how its relations to the world-wide public which it serves are being gradually adjusted and defined.

As the Secretary-General of the League of Nations has described to you the principles on which the Secretariat of the League has been organised so lately as last March, I do not propose to say much on that head. My own office, the International Labour Office, which now has a staff of 400, drawn from 38 nationalities, has been built up on the same lines, though perhaps being less involved in political matters, it has been easier to construct it on a hierarchical plan and to apply rigid rules of recruitment and promotion. As regards the former I should like to say a few words. Every ship must have the crew best fitted to navigate it. In our case, if the staff is to command the confidence of the public who pay for it, it has to meet two demands not always easily reconciled. On the one hand, it must possess the intellectual and linguistic powers necessary to do the highest type of administrative and research work. On the other, it must be drawn as far as possible from all the States Members of the League. In order to meet these requirements, we have come to rely almost exclusively on written examinations as the test for entry into both the First and Second Divisions. We do not inflict on our candidates the long-drawn-out agonies associated with Burlington House, but our experience has convinced us that, despite

all the wails which rise from the examiner's torture chamber, there is no fairer or surer method of discovering ability and eliminating jobbery. Examinations have been conducted for us all over the world, but in all cases we correct the papers ourselves in Geneva. By this method we have tried, with a fair measure of success, to reconcile the need for efficiency with the legitimate demand for national representation from the countries members of the League.

There is yet another recruiting problem which has received much consideration and is of great importance. Is it best to take young men and train them from the beginning or to look for older men with some experience of administration in their own countries? Opinions are still divided on this point; but I think the balance is definitely tilting towards the former view. There are special problems to be faced in an international service, for which a national service does not always afford the best preparation. Men who have spent twenty years in doing things one way often find it inconceivable that it may not in all circumstances be the best possible way. They often feel uncomfortable outside their home surroundings, and, more unsettling still, their wives are apt to revolt against shopping in a currency with which they are unfamiliar and in a tongue which they cannot handle as volubly and pithily as good bargaining demands. For these and other reasons, older men coming to Geneva, like older men entering the Civil Service, are often not so successful as their previous careers would warrant one in expecting. Unless they are particularly adaptable, they do not acquire the necessary spirit and outlook as readily or as thoroughly as a young man fresh from the University. We are therefore more and more inclined to seek men and women under 30; but we insist on another essential qualification. They must have been educated in their own countries. A man or woman who has lived abroad most of his life is, as a rule, of little use from our standpoint because he does not represent the culture and ethos of his native land. A thoroughly international staff can only be satisfactorily composed from thoroughly national elements. A collection of colourless cosmopolitans could never contain the variety of experience, standpoint, and ideology which is necessary to efficiency. This may seem something of a paradox. It may appear fantastic to look for efficiency in heterogeneity. But it is the business of an international administration, as of a government department, to smell danger from afar. It has to anticipate the probable effect of its actions in any of the fifty-five countries that may be affected. To do that it must have at its disposal the advice of men who know their own people thoroughly. In my experience it is a very rare thing indeed for a man to understand in all its

shades and subtleties the psychology of any country in which he has not been born and educated. Once that understanding has been gained, it can be kept alive by holidays spent at home and the constant contact with compatriots, which nearly every nationality enjoys at Geneva. We aim at preserving contact between our staff and their own countries as much as possible. One of the obvious dangers of Geneva is the loss of touch with realities, and if one thing is certain it is that international problems are intensely real problems, which can only be tackled successfully in a realistic spirit. In saying this I am casting no slur on idealism, but simply denying any final antinomy between idealism and realism. Like all great causes, that of international co-operation can only be effectively promoted by combining idealism of aim with realism of method.

But while in my view the League is likely to obtain the best service from men and women enlisted at an early age and looking to it for a life career, there are perhaps methods by which direct contact may be fostered between it and the national civil services to the advantage of both which have not yet been sufficiently exploited. Already some governments have seconded officials for a period of service at Geneva to study political, economic, or social questions in order that they may avail themselves of the wider outlook and the concentrated experience of other countries which it affords. These experiments have been mutually beneficial, and if converse arrangements could be made by which League officials could study their problems at first hand in a national setting, that too would, I believe, be found of real utility. Perhaps in the future some such system of temporary interchange may be worked out; but the nucleus of the international service must still consist of men who are prepared to make it their life's work.

But if it is indispensable that the individuals composing the permanent staff should preserve their national background, culture and characteristics—and they are, fortunately, almost impossible to lose—it is equally essential that their allegiance should be not national but international. This fundamental principle was laid down by one of the League's greatest and most clear-sighted architects, the late Lord Balfour, in the first year of its existence. In a report adopted by the Council in 1920, and again reaffirmed by the Assembly last year, he laid it down that " no one nation or group of nations ought to have a monopoly in providing the material for this international institution." I emphasise the word " international " because the members of the Secretariat once appointed are no longer the servants of the country of which they are citizens, but become for the time being the servants only of the League of Nations. Their duties are not national but " international." In execution of that

principle both the Secretariat and the International Labour Office were organised not in national groups, but in departments dealing with subjects. We have no British, French, or German sections, but sections dealing with labour statistics, unemployment, social insurance, and so on, staffed by as many different nationalities as possible in order to extend the scope of their experience and researches as widely as the limitations of our budget permit. In practice nothing but advantage has resulted from this system. Differences of training and temperament are easily resolved in the common effort to produce work which will reflect credit on the section and which will pass the test of criticism, to which an international service is at least as much exposed as any national service. In this way a real *esprit de corps* has been developed, which could never have been evolved by any system of organisation by nationalities. The staff is imbued with the idea that it is at the service of the whole society of nations without discrimination. It is only in so far as it is animated by this spirit that it can hope to command confidence in its impartiality and its devotion to the general welfare of the League above and beyond any purely national interest.

The notion that there are international principles and policies transcending the immediate interests of the individual nations may still seem sufficiently strange to need some further elucidation. This new conception upon which the League was founded is still too often seen in opposition to the old idea of the world as consisting simply of a number of discreet national particles or sovereignties held together by no common ties, but revolving side by side in international space in perpetual opposition, unresolved by any higher principle of unity. If this latter view were the true and final view of reality, I am convinced that the League would no longer exist at this moment. The fact that it has not only survived but, despite all the setbacks and disappointments which have inevitably chequered its progress, has nevertheless gone forward with gradually increasing strength, is a proof that the world is slowly evolving beyond a purely nationalistic organisation of society. If he did not believe this, if he was not firmly convinced that the real hope of maintaining and developing civilisation as we know it lay along this path, the international civil servant would not feel that his job was worth doing at all. But, placed as he is at the centre of the world's affairs, coming into daily contact with men from every quarter of the globe, realising how impossible any radical solution of their economic difficulties and of their political troubles which are so closely related to them are without international action, he quickly perceives that the creation of a system of international co-operation is not just a beautiful dream, but a stern necessity. Without it, the complex machinery

of commerce and credit upon which the general prosperity of the world now depends threatens to collapse altogether. It is not difficult, therefore, for him to acquire a loyalty to the idea of international service almost as convinced and dynamic as loyalty to the idea of national service. If there had been any real conflict between the two, *esprit de corps* in an international staff composed of men and women with strong national affinities would have been impossible. But because it is now becoming so ominously obvious that the well-being of each nation is indissolubly bound up with the well-being of every nation, allegiance to the notion of international service has become no longer incompatible with patriotism, but its necessary complement.

I do not propose to dilate further on this subject, though perhaps I shall come back to it later. I want now to suggest some of the constitutional problems which have had to be solved in framing an international civil service.

Perhaps the most marked difference between the situation of an international and a national service is to be found in their respective relationships to their Legislatures. In Great Britain, for instance, Parliament is in session for eight months of the year, and the Cabinet, its executive organ, is in constant being. The Assembly and the International Labour Conference, on the other hand, only meet for one month, and their executives, the Council and the Governing Body, two or three times a year in addition. The absence of continual contact between the permanent staff and the representative bodies from which they take their orders necessarily creates a peculiar problem. It throws upon the higher officials a heavy weight of responsibility and a demand for constant but cautious initiative. To do nothing may at times be a plain neglect of duty, though to act may inevitably incur criticism. After all it happens very seldom in public affairs that official action pleases everybody, but the national civil servant is not called upon to bear the brunt of his acts, even when they are mistakes. He has a Minister who takes all the praise when there is any, but who also takes all the blame with which the Opposition rarely fails to greet his most meritorious measures. Moreover, the Minister himself knows that he can always in the last resort appeal not in vain to the big battalions behind him, who do not want to risk their seats at the polls for the sake of censuring his administration. But the international civil servant has no such bulwarks to defend him. He has no Minister, whose fate is linked with his, and, above all, he has no political party predisposed to approve his actions, because the government which that party has created is ultimately responsible for them.

Now this is a very far-reaching constitutional difference between

the situation of a national and an international service, which I should like to illustrate by reference to the important question of finance. Here in England a department prepares its estimates and then presents them to the Treasury. A lively interdepartmental skirmish then begins. The aim of the spending department is to prove that its proposed expenditure is essential to national policy. If it has a strong Minister who knows his job, he takes the fight to the Cabinet and probably wins, except in times of financial crisis. Once the estimates are presented to the House of Commons they are as good as passed. Token reductions of £100 may be moved in order to give an opportunity for a discursive debate on the work of the department during the past year, a useful exercise but with little or no reference to finance. Everybody knows that the estimates are intangible except at the price of endangering the Government, and that the big battalions can be relied on to prevent that. Hence the civil servant never has to defend his estimates against Parliamentary criticism. His only ordeal is when his turn comes round before the Public Accounts Committee, and by that time the money has already been expended.

The international civil servant is in a far less comfortable position. It is true that as yet he has no Treasury to face, but his path is beset by a series of other dragons. The estimates of the Secretariat and of the Permanent Court go first to the Financial Supervisory Commission, which is appointed by the Assembly and meets fairly often throughout the year. There it is subjected to a minute scrutiny item by item, department by department. At the end of a week the Commission makes a report to the Assembly proposing reductions under various heads. The budget of the International Labour Office has already run the gauntlet of the Governing Body and a Finance Committee of exemplary vigilance before it ever reaches the Supervisory Commission. Once past these first hurdles, the estimates are circulated to the governments and referred to the Fourth Committee of the Assembly. Here there is no Minister and no Ministerial party to defend them. The responsible officials have to meet criticism and make out their case; but they are now considerably assisted by the Supervisory Commission, which is, as a rule, prepared to defend its action in accepting the items which have been justified to its satisfaction. But it does not at all follow that the Fourth Committee will acquiesce in the views of the Supervisory Commission. It usually makes further reductions on its own account and is very jealous of its complete sovereignty in all budgetary questions. There is no spectre of a Cabinet crisis or of impending dissolution to deter it from exercising effective parliamentary control of the League's finances.

Now I have not gone into some detail into this question of finance

in any spirit of complaint against the system which has been created. I believe that criticisms of finance is healthy and that it is salutary for the officials actually responsible for expenditure to have to meet it. I have simply chosen finance as an illustration of the peculiar relationship of the international civil servant to his legislative authority. Though he has no ministerial defences, it will perhaps be apparent from what I have already said that machinery is being built up to preserve an organic link between the international bureaucracy and the representative bodies to which it is responsible. Though the Assembly and the Council, the Labour Conference and the Governing Body are only in actual session for about two months in the year, they maintain effective touch with Geneva and Geneva with them by a series of bodies and individuals with delegated powers.

In the realm of finance there is the Financial Supervisory Commission and the Auditors, who maintain a sort of continuous audit and report to the Commission at every meeting. For the supervision of the mandated territories, the Mandates Commission has two long sessions every year. The Governing Commission of the Saar and the High Commissioner of Danzig are in constant touch with the Secretariat and the Council. The Economic and the Financial Committees meet regularly to guide the action of the Secretariat in economic and financial matters. The Governing Body has various committees, which meet between sessions, and its President, with the assistance of the two Vice-Presidents representing the employers' and workers' groups, are in frequent communication with the Directorate of the International Labour Office. The President of the Council is likewise at the disposal of the Secretary-General for consultation on any urgent matter of policy.

A second series of contacts has been built up through constant communication between the Secretariat and the various governments members of the League, to which, in the case of the International Labour Office, the representative employers' and workers' organisations have to be added. Correspondence by letter or cable is now effectually supplemented by the long-distance and wireless telephone, which has immensely facilitated rapid and satisfactory communication; but at best these methods are not always an adequate substitute for the opportunities for personal discussion, which the national civil servant enjoys with his ministerial chiefs. Personal contact is, after all, the only foundation for complete trust and understanding. Without it little important business can really be transacted. For this reason officials of the League are obliged to travel fairly often in order to obtain the views and negotiate understandings with the responsible persons in the various countries. It must never be forgotten that international action can only result from agreement

between the nations concerned. On that account it is usually sedate in its pace. Sometimes when the goal to be attained seems as plain as a pikestaff from an international standpoint, a long process of patient persuasion and explanation is needed before its desirability can be made evident to the national authorities or means to it worked out, which will avoid conflict with prevailing currents of their public opinion. Hence international action at times seems exasperatingly slow, but it has to be adapted to the actual exigencies as well as to the ideal requirements of the situation. In order to take account of them a whole network of communications between Geneva and the various capitals has been gradually woven by means of committees and commissions, correspondence, conversations, and journeys. Some people think all this machinery cumbersome and unnecessary, that there ought to be short cuts to League action just as some think that executive action in this country is fatally trammelled by the dilatoriness of parliamentary procedure. No doubt the League machinery is cumbersome, but as yet it is necessarily so. It moves at present in low gear and cannot be driven at a more exhilarating pace until public opinion is fully educated to the need for swift and effective international action. That education has been the main task of the League during its first ten years. It is only as the world is brought to the conviction that the primary condition of its prosperity is to be found in the establishment of political security, of business confidence, and of social justice on a solid international basis that the activities of the League can be fully developed. Its friends and its critics are too apt to forget that the action of the League is exclusively determined by its component parts. Its tempo and effectiveness depend solely upon their good will or reluctance to co-operate with each other. They alone decide policy. The permanent staff are in this respect in precisely the same position as the Civil Service here, but for the reasons that I have given it is much more difficult for them to secure decisions on policy than it is for national officials. Because the international staff are always with the League they are often thought of being the League. Its shortcomings are attributed to them; but though a share of the blame is no doubt theirs, just as the failings of a department are not always those of its Minister, nevertheless it is not with them that the main responsibility for success or failure lies, but with the governments of which the League is composed.

From what I have said it will be seen that although the international service is necessarily more widely separated from its representative bodies than a national service from its Cabinet and Parliament, nevertheless a technique is being worked out which goes a long way towards bridging the gap. Although the international civil servant has no Minister and no parliamentary majority to assume

responsibility for his acts, he is nevertheless seldom in a position when he has not received a preliminary assent from those to whom he is answerable. Perhaps he requires to be particularly wide awake to foresee the possibilities of trouble over the whole of the varied field which his work affects, and to take the right steps to avert it in good time. But three-quarters of the art of administration lies in the intelligent anticipation of trouble and in the exercise of timely persuasion and discretion to forestall it. By using his talents in these directions the international official can make it reasonably certain that his actions are in harmony with the views of at least the majority of those to whom he has to account for them. Though he is frequently exposed to criticism, he may, if he has used due foresight and diligence, know that he will be covered and supported, almost as surely as if he had acted on a Minister's order or a Cabinet decision. In other words, a system has been worked out which reproduces in its essential features the subordinaton of a national service to the general will in a democratic state. Only in this way could confidence between public and public servants have been established internationally as it is nationally; and that, as I said at the beginning, is the primary condition and the ultimate test of success in any public administration.

In conclusion, I should like to say a few words as to the kind of career which the international civil servant can expect to enjoy. In all countries the rates of remuneration of civil servants are considerably inferior to those prevalent in commercial or professional occupations. In some countries they are so low that government service is only a half-time job, because the officials have to earn the greater part of their livelihood out of office hours. I once made the acquaintance in Eastern Europe of the Permanent Secretary of an important department who did his work there in the morning and made a respectable income as a bookmaker in the afternoon. Of course the level of efficiency suffers severely where the pay is inadequate; but even in countries where the civil servant is paid a living wage it is almost always substantially lower than the emoluments offered in private employment for similar work. As against this, however, the civil servant enjoys certain advantages and privileges, which compensate him for a comparatively smaller income. In the first place, he enjoys greater security. Barring a revolution or other exceptional circumstances, his appointment is for life. His income is not subject to the good health, good judgment, and good luck of himself or his employers, as must always be largely the case in other professions. A Government is a solid institution. The great bulk of its servants can count on security of tenure in good or bad times alike. It cannot as yet be said that the international civil servant is in an equally stable position. The League has certainly

increased in strength steadily from year to year. As its roots have struck deeper, confidence in its future has grown, so that last year the Assembly revised the conditions of service of its staff and placed them on a more permanent footing. Nevertheless, it can hardly be maintained that the need for international co-operation is as imperatively felt as the need for government. In various countries Press campaigns are worked up from time to time against the League on the ground that it is an obstacle to national policies. No one has ever started a campaign for the abolition of national government. In point of security, therefore, the international official does not enjoy the same guarantees as his national confrères.

Secondly, the national official is responsible for executing the decisions of government. This implies the conscious exercise of a certain measure of power. As Hobbes said: " Honour consisteth only in the opinion of power," by which he meant that power brings with it a corresponding prestige, which to many people is a compensation for a modest salary. In this respect the international civil servant is not so favourably situated. His action is always indirect. The translation of League decisions into practice is mainly effected by the governments which compose it, and rarely by the staff of the League itself. Their functions are advisory and administrative, but seldom executive.

Thirdly, the national official is the servant of his country. All the honours, both social and decorative, to which a distinguished servant of the State may aspire are rightly open to him. However much some people may affect to despise titles or social esteem, these things do possess a real value, and are often a more acceptable reward than actual emoluments. The international civil servant is, by the nature of his position, debarred from rewards of this kind. His work is necessarily almost unknown to his fellow-countrymen, and even where it is appreciated it is not held in the same regard as service directly rendered to the country. It opens few gates into business or politics. As for decorations, he is properly and inevitably forbidden to accept them.

Finally, the civil servant undoubtedly derives satisfaction from the knowledge that he is doing national work, however humble his sphere. Patriotic sentiment is a real incentive to energy and efficiency, independent of pecuniary reward. In this respect the international official is in a comparable position. Loyalty to international service may seem what Plato called a " watery affection " compared with the strong wine of patriotism, if only because it is a reasoned rather than an instinctive faith. It is none the less a reality, and, as I have already suggested, the two loyalties, so far from being incompatible, are complementary. Of course, there are plenty of people in any service who remain completely indifferent

to any but material considerations, and who simply regard their work as a more or less irksome method of earning a livelihood. No doubt there are such people in Geneva as there are in Whitehall. But, on the whole, it is surprising how quickly the majority imbibe a genuine allegiance to the aims of the League and the I.L.O., and how strongly they feel any setback or failure in their progress. That feeling is engendered by the conviction that under modern conditions the world cannot hope to maintain its advance towards a higher level of general prosperity and civilisation unless first of all peace is guaranteed, and secondly mutually destructive economic competition is limited by rationalising the financial, commercial, and industrial relations between nations. These two aims can only be gradually achieved by a persistent and systematic development of international co-operation, both in the political and economic fields. It will be a long and up-hill task, requiring not years, but generations, for its full accomplishment. That is the task which the international civil servant has before him. He is still groping his way forward along the first stages of a road through unexplored country. He is largely dependent upon the sympathy and help of the national services with which the various phases of his work bring him into contact. Already the League and the I.L.O. are constantly or occasionally in touch with almost every British Department. I can at once think of close relations existing between us and the Treasury, Foreign Office, Home Office, Dominions Office, Colonial Office, Admiralty, War Office, Board of Trade, Ministry of Health, Ministry of Labour, Office of Works, Board of Education. Civil Servants from these and probably other departments come frequently to Geneva to deal with a great variety of matters. They have already made a contribution of immense value to the work of the League and the I.L.O. in almost every sphere of their activities. On our side we have warmly welcomed and appreciated the spirit in which the collaboration of the British Civil Service has invariably been given, and which we know can always be relied on in moments of difficulty, when hard problems have to be solved or awkward obstacles circumvented. The limitations under which we labour are now being better understood, and perhaps at the same time the possibilities which the League offers as an instrument of policy more clearly realised. Parties and Ministers change, but the Civil Service is the executive arm of every administration. Sympathetic co-operation between the international civil service and the national officials in the various countries is therefore indispensable to the proper working of the League. We, on our side, are proud to think that such co-operation has been already established with the Civil Service of this country, and shall do all in our power to ensure its further development.

The Scottish Poor Law and the Poor Law (Amendment) Act, 1834

By W. L. Burn, B.A.

"FROM one end to the other is England at this moment ringing with bitter and incessant complaints that her capital is consumed, the earnings of her industrious citizens wrested from their hands to pamper indolence and profligacy . . . . and that a hundred additional evils are daily occurring and increasing under the iniquitous system of the Poor Laws . . . . It is the boast of every Scotsman who knows and values the institutions of his country that the Scottish system of Poor Laws is the most benevolent in principle, the simplest in practice, and the least burdensome to the people that could possibly have been devised." This opinion[1] of the respective merits of the English and Scottish Poor Laws emanated from a country which had no Poor Law at all, and may be considered to have, at least, the virtue of impartiality. It was, in fact, contended that the constitution and administration of the Poor Laws in Scotland not only were vastly less expensive than the English system,[2] but were far more inclined to foster independence among the poor, and generosity among their wealthier neighbours. It is interesting, then, to inquire why a system apparently so cheap and so efficient as that of Scotland was so little considered as a basis for their plans by the reformers of the English Poor Laws.

The old Scottish system is not so well known as to make a short description of it unnecessary in this paper. The chief difficulty is encountered, at once, in discovering who was entitled to Poor Relief. For the greater part of the 16th Century English and Scottish legislation on this subject ran on lines almost exactly parallel. But the Act of 1579 (12 Jac. VI, c. 74), although in parts almost literally copied from 14 Eliz., c. 5, contained no such provision as the English Act for furnishing work to able-bodied paupers. From this point the two systems diverged. By the Act of 1579 relief was withheld in Scotland from " idle and lazy vagabonds," including " all common labourers, being personnes abile in body."[3] In this fashion the law

[1] *Dublin Univ. Rev.*, May, 1834.

[2] The *Westminster Review* for 1841 (Vol. 36) calculated that during the years 1835-37 Poor Relief in Scotland equalled a charge of 1s. 2¼d. per head of the population, and in England 6s. 10½d.

[3] This, of course, was not a new departure. It was only a reiteration of the old law.

continued for over two centuries, relief being refused to able-bodied paupers. In 1804, however, the case of Pollock *v.* Darling[4] gave occasion for a new interpretation of the law, when the Court of Session declared that a compulsory assessment might be made to maintain the " industrious poor " in time of need. In the opinion of the Court, " Inability to earn subsistence is the true and only distress which it is the object of a code of poor's law to relieve: The causes which produce this disability, provided they be real, cannot be distinguished from each other. While it is admitted that, by statute law, those who labour under old age, or lasting bodily infirmities are entitled to relief, how should this obligation of the rich to the poor be discharged, where a family is perishing for want, if this should arise, not from want of health but from a dearth of provisions . . . . It is the known and uninterrupted usage to give relief to the industrious poor, under circumstances of temporary distress, from whatever cause it may arise; they cannot earn a complete livelihood to themselves without assistance; and that assistance, under the present system, till now has never been called in question."

This decision, without precedents, is a curious one; and still more curious is the fact that it was not acted upon. It was, indeed, supported by an *obiter dictum* in Abbey Parish of Paisley *v.* Richmond and others, in 1821 (Session Cases. Shaw and Ballantine. Vol. I, at p. 167) when the Sheriff of Renfrewshire said, " I am rather of the opinion that they (the statutes) were intended to comprehend the industrious but indigent poor as well as those who were incapacitated by infirmity from labour," and it was suffered to exist until 1852. In that year it was overruled by the House of Lords, in McWilliam *v.* Adams (Scots Revised Reports. H.L. IX, at p. 220) which decided that able-bodied persons were absolutely excluded from relief under the Poor Law of Scotland. This had been the opinion of the Court of Session, and, in Lord Brougham's words, " The universal opinion of the country and that of all text-writers had, for upwards of two centuries, been in favour of the construction which the Court below has now, by a very large majority of the learned Judges, sanctioned." He went on to refer to Pollock *v.* Darling which, he realised, was irreconcilable with the present decision. " We thus perceive that the prevailing alarms, and feelings and natural and praiseworthy compassion appear to have influenced the consideration of the question and to have affected what ought to have been a strictly legal argument in the construction of a statutory enactment. It is not denied that this decision has been far from commanding the assent of the profession ever since, and it is not denied that it has remained in practice a dead letter. It

[4] *Dictionary of Decisions*, 1805, *Vol.* XII, at p. 10591.

probably was considered only to apply in exactly similar circumstances on occasions of great dearth, which happily have not recurred since 1800; certain it is, that the case of Pollock *v.* Darling has never been acted upon."[5]

It might be thought presumptuous in an Englishman to declare what was the law of Scotland from 1804 to 1852 in regard to proper objects for relief, when that law was in such a peculiar condition; and it will be enough to point out that what the system refused in practice it was thought to refuse also in theory; or, alternatively, that theory was disregarded. The Report of the Commission on "The Administration and Practical Operation of the Poor Laws in Scotland," published in 1844, defined the persons entitled to relief as "those who are either wholly or partly disabled, on account of age or infirmity so as to be incapable of working and earning for themselves a sufficient maintenance."[6] And David Monypenny in his "Remarks on the Poor Law and the method of providing for the Poor in Scotland" (1834) held that "those who are able to work, but who, by temporary and accidental circumstances are reduced to indigence, must be supplied from other than compulsory sources."[7] The decision in Pollock *v.* Darling would not, in his opinion, be given, at the time of writing, on the same facts.

It would seem to be sufficiently established that in practice, and in general opinion, the Scottish Poor Laws differed radically from the English in that they did not allow of relief to the able-bodied poor. They differed, further, in their sources of funds for relief, and in the bodies by whom those funds were administered.

In the large number of parishes which were defined as "rural" or "landward" the administration of the Poor Laws was in the hands of a joint-board of the Kirk Session[8] and the Heritors or Landowners. It was apparently, only in the south of Scotland that the Heritors paid much attention to their duties; and in practice, over a great part of the country, the Minister's administration was unchallenged. In the burghal parishes, that is, parishes wholly situate within a royal burgh, the raising and administering of the necessary funds were in the hands of the Provost and Magistrates; and, in parishes which were "mixed," partly burghal and partly rural, in the hands of the Kirk Session, Heritors and Magistrates.

The funds at the disposal of these bodies were: Money raised by

[5] In Jack *v.* Isdale (1866) the Lord Chancellor, Lord Cranworth, destroyed the sophistical argument that although the able-bodied poor could not legally demand relief, such relief might be given them out of the public funds as an act of grace.

[6] The Report did, indeed, speak of "occasional poor," but did not attempt to expand the above definition to include the able-bodied indigent.

[7] At page 40.

[8] Consisting of the Parish Minister, and two or more lay elders, who hold office for life (unless they should be removed by a Church Court).

Church collections; the income of Mortifications, or charitable bequests; and, in some cases, the produce of assessments.[9] In the landward parishes, assessment was the exception. The Report of the Commission, in 1844, said: " A strong feeling in opposition to a legal assessment has, however, existed in Scotland, and the clergy in general have strenuously exerted their influence to prevent recourse being had to any compulsory mode of raising funds for the relief of the poor." But the report added that assessments, voluntary or legal were, except in the Highlands, replacing collections as the chief source of relief.

Such was the Scottish system, and its merits had not escaped the notice of English legislators. The House of Commons had received in 1817 a report from a committee of the General Assembly, and Chalmers, the champion of the Scottish system, was in close touch with many of the English clergy, and especially with Blomfield,[10] Bishop of London. In spite of this, however, and in spite of the obvious advantages which the Scottish seemed, at first sight, to offer, it is a curious fact that, during the debates on the Poor Law in 1834, that system was hardly mentioned.[11] Cobbett, indeed, mentioned it, but only to condemn it. " By the present bill, these extraordinary gentlemen, perhaps from Scotland, perhaps, for what he knew, from Hanover, were to take the management of the poor from the hands of the gentry, and to destroy the powers of the local magistracy."[12] And on the Third Reading, before a thin House, Cobbett exclaimed: " Well, there was another country where they had partial Poor Law; but he trusted that England would never adopt the system of that country. At all events, water-porridge, and brose should never be introduced into Sussex if he could help it."[13] And the Act, as passed, embodied none of those features, clerical administration, organization by parishes, and denial of relief to the able-bodied indigent, which marked the Poor Law of Scotland.

Two points may be dealt with shortly. The creation of Poor Law Unions was, admittedly, an almost revolutionary step. It was opposed then, and long afterwards, but it was apparently the general

[9] According to the Report of the Committee of the General Assembly in 1839:—

517	parishes with a total population of	872,626	were	unassessed.
126	,, ,, ,,	305,654	,,	voluntarily assessed.
236	,, ,, ,,	1,137,646	,,	legally assessed.

[10] During the debate in the House of Lords on 8th August, 1834, Blomfield alluded to " that distinguished person, Dr. Chalmers, whose work on the civil and religious economy of large towns your Lordships would do well to peruse."

[11] Lord Hawick praised the rule in Scotland by which the heritors had a share in the administration of the Poor Law (9th June, 1834), Hansard, 3rd Series, Vol. XXIV, p. 334, and Brougham gave general praise to the Scottish Poor Law (21st July, 1834). Hansard, 3rd Series, Vol. XXV, at p. 233.

[12] House of Commons, 26th May, 1834.

[13] House of Commons, 1st July, 1834. Hansard, 3rd Series, Vol. XXIV, at p. 1048.

opinion that the parochial organization was inadequate.[14] The prevailing Benthamism of the day was in no mood for the reorganization of old institutions like the Parish, and the game of creating new administrative areas, which has since been played with so much enthusiasm, had begun.

In the other point, the denial of relief to the able-bodied indigent, the Scottish system had almost been approached. Malthus, according to Edwin Chadwick,[15] " attributed the existence and increase of pauperism mainly to the inevitable pressure of population upon the means of subsistence, and prescribed, as the necessary remedy, the absolute repeal and disallowance, of any legal provision of relief."[16] " Eminent economists and statesmen, and, indeed, most persons of intellectual rank in society, adopted this opinion (of Malthus) as a settled conclusion and were of opinion that all measures for the amendment of the Poor Law in England ought to tend to its discontinuance."[17] But Chadwick added, " The evidence . . . . . appeared to me to negative this conclusion." And, considering the great trouble and violent agitation which was caused, especially in the North of England, by the denial of Out-Relief, little less than a revolution might have followed the total abolition of Poor Relief.

There would seem, however, to be other reasons why the Scottish system did not appeal more powerfully to the English reformers; and, of these, one was the criticism which that system was enduring from within.

It was, indeed, enjoying at the same time the support of one of the most able men in Scotland of the day, Thomas Chalmers.[18] His experiment in Glasgow has already received much attention, though no more than it deserves. Upon becoming Minister of the Parish of St. John's, a poor and populous district, Chalmers' first care was to extricate his charge from the general system of administration for the poor of the city at large. The parish was divided into twenty-five parts, each containing approximately some fifty families or four hundred persons, and each part placed under the care of a deacon. The money available for distribution consisted of the Church Door collections, with the addition of £175 a year from the Town's Hospital. This money was very sparingly distributed,

[14] During the debates in 1834 a number of instances were quoted where parish clergymen in England had succeeded in reforming the abuses of the Poor Law, but neither of the Houses was much impressed.

[15] " Poor Law Administration: Its Chief Principles and their Results in England and Ireland as compared with Scotland." This was a paper read before the Social Sciences Congress in Edinburgh in 1863 and published in the Journal of the Statistical Society of London, Vol. 27.

[16] *Op. cit.*, at p. 492.

[17] *Op. cit.*, at p. 492. Nassau Senior had originally been of this opinion.

[18] *Cf.* his " The Sufficiency of a Parochial System without a Poor Rate for the Right Management of the Poor."

and " the number of applications fell in a month or two to about one-fifth of the applications under the old system."[19] But mere parsimony in granting relief was not the secret of Chalmers' success. It was his endeavour, by means of the deacons, to enlist on the side of the independence of the poor all those forces which were too generally neglected. One of these was " the sweetening effect of mere acquaintanceship " between the poor and those " whom Providence has placed in a more elevated situation than their own."[20] It was the duty of the almoners to consider recourse to the Poor's Money as a last expedient. Before that they must try to stimulate the industry of the applicant; to improve his economy; to attract for him the sympathy of his relatives, his neighbours, or, finally, to enlist for him the personal help of a wealthy man.[21]

One evil of a system of Poor Relief administered by paid officials under statutory directions is that these officials tend to become acquainted only with the poor independent and the poor indigent. It was Chalmers' endeavour to stand beside the poor at all stages of that melancholy progress from independence to pauperism, and to avert them, if possible, from the final condition by stimulating industry in the poor and sympathy in their neighbours; by developing, in fact, those qualities which are so essential to Society.

Chalmers' system was criticised, first, on the ground that its severity drove the poor from St. John's to other parishes; and, alternatively, that it owed its success to the fact that Chalmers' deacons were wealthy men, with leisure, who could afford to augment from their private incomes, the scanty funds for the poor.[22] These charges Chalmers completely denied. The work of a deacon, he held, would take up no more than three hours a week, and could be performed, as it was in St. John's, by men who had no money of their own to give away. The influx of paupers to the parish, he said, amounted to sixty-one, the efflux to twenty-nine.

Chalmers left Glasgow in November, 1823. His system was continued until 1837, when it was abandoned, because it met with no support outside the parish. But of its success in St. John's, and its applicability elsewhere, Chalmers had no doubt. " We have no faith in a national board that undertakes for the pauperism of a whole empire."[23] " Give us a sufficient number of deacons for each parish and a sufficient number of parishes for an empire."[24]

But although Chalmers could repel attacks made upon his experiment in Glasgow, he could not afford sufficient protection to cover

[19] *Op. cit.*, at p. 110.
[20] *Op. cit.*, at p. 14.
[21] *Op. cit.*, at pp. 80-82.
[22] " It was a pet scheme, in short, of the aristocracy of Glasgow." *Westminster Review*, 1841, Vol. 36.
[23] *Op. cit.*, at p. 86.

the whole Poor Law system of Scotland. The main complaint was that the money available for distribution was, in many parishes, wholly inadequate. The resulting evils were apparently felt most heavily in the Highlands and Islands, and in the large towns. According to the Report of the General Assembly, in 1839, the Parish of Kilmuir, in Skye, with a population of 2,275, had an average annual amount of £3 a year to distribute. In such cases, Poor Relief could not be said to exist.[25]

It was, however, from Edinburgh that the most important attack came. Dr. William Pulteney Alison,[26] elder brother of the historian, was not only at the head of his profession in Scotland, but from his hospital experience in Edinburgh, intimately acquainted with the condition of the poor in that city. He published in 1840 his "Observations on the Management of the Poor in Scotland and its Effects on the Health of the Great Towns," and in 1844 his "Remarks on the Poor Laws of Scotland."

His thesis was that the sufferings of the poor in the large Scottish towns were greater than such sufferings in the towns of the best regulated parts of Europe, and were increasing;[27] and that the saving in Poor Relief which the Scottish system provided was more than outweighed by the spread of typhus fever, and other contagious diseases, as well as the prostitution, mendicancy and crime which were largely due to the undernourishment of the poor. These arguments were pressed home by the doctor's brother, Sir Archibald, and very soon attracted attention.[28] It is true, of course, that Dr. Alison's first book on this subject was published six years after the Poor Law (Amendment) Act had been passed. But many intelligent and influential Englishmen[29] were sufficiently acquainted with Scotland to know, that, when there was not a Chalmers "the much vaunted system was nothing but the old plan of starving the poor."

More important, however, than this was another reason which made it unlikely that England would copy the Scottish system. In the administration of the Scottish Poor Law clerical influence, and more precisely, the influence of the Established Church was very strong; in the country districts, predominant. It happened that in

[24] *Op. cit.*, at p. 87.

[25] Chalmers was asked, in his examination before the Royal Commission in 1843, whether he thought "the fact of the poor maintaining the poor an evil?" "No, I do not," he replied. (Report, 1844, at p. 278.) This practice often took the form of "quartering" or billeting the poor on their more fortunate neighbours; and in Shetland the infirm poor were wheeled from one house to another in wheelbarrows.

[26] 1790-1859. Professor of Institutes of Medicine at Edinburgh, and a distinguished authority on Physiology. *Cf.* for a criticism of his work on the Poor Laws, the *North British Review*, Feb., 1845, Vol. II, at p. 471.

[27] The average annual mortality in Glasgow in 1837 was 1 in 24·63, in London 1 in 41, and in England generally 1 in 50. [Management of the Poor in Scotland, at p. 14.] *Cf. Westminster Review*, Oct., 1841, Vol. 36, at p. 381.

[28] *Cf.* Autobiography of Sir Archibald Alison, 1883, Vol. I, pp. 459-60.

[29] Such as John Kay, one of the Assistant Poor Law Commissioners.

England this period was marked by so much hostility to the Establishment that clerical administration of the new Poor Law was practically impossible.

Immediately after the passing of the Reform Bill in 1832 many of the Dissenters attempted to use the power which they believed that reform had given them to attack the Church of England. They were especially concerned with the questions of Tithe, Church-Rate, and the marriage, and admission to the Universities of Oxford and Cambridge of non-members of the Establishment. A minority of them, going further, demanded the disestablishment of the Church; and in the autumn of 1833 and the winter of 1833-34 meetings held in many of the large towns of England supported the Dissenters' petitions. There were, indeed, among Churchmen, many who felt that the share of the clergy in what might be called " temporal " matters should be increased rather than diminished. Coleridge complained, in his work " On the Constitution of Church and State according to the Idea of Each " that " the poor are withdrawn from the discipline of the Church. The education of the people is detached from the ministry of the Church."

Legislation in this direction, however, would have been impossible in the " reformed " House of Commons. A sufficient quantity of Benthamism had been absorbed by the Tories, Whigs and Radicals alike to provide them with some points of agreement; but on ecclesiastical matters the Tories were Tories still, while their opponents were bitterly suspicious of clerical interference. And that clerical administration of the Poor Law meant a great deal of interference there could be no doubt. Chalmers' almoners were to make inquiries about the applicant for relief from his " most respectable next-door neighbours," and " to lecture them (the poor) on the virtue of not being burdensome to others."[30] Such investigation was hotly opposed by those who believed that each man was, generally, the best judge of his own happiness; and there was, at this time, a strong desire on the part of many Whigs and Radicals to confine the clergy very strictly to their spiritual duties, a desire stimulated by the activities of Tory clergy at the Quarter Sessions and of Tory bishops in the House of Lords. " A peremptory exclusion of all qualifications to act either as electors, or as justices in respect of their livings, would be about the best thing for the Establishment that could be desired," was the opinion of the *Edinburgh Review*.[31]

And so, in spite of the apparent advantages of the Scottish system, the English Poor Law was amended on altogether other lines; partly

[30] Chalmers: The Sufficiency of a Parochial System without a Poor Rate for the Right Management of the Poor, Works, Vol. 21, at pp. 49, 56.
[31] Jan., 1834, Vol. 53, at p. 505.

because of the defects in the Scottish system and the impossibility of withholding relief in England from the able-bodied poor; and partly because the governing class of the moment had no wish to attempt such a reorganization of parochial institutions, and such an extension of clerical activity as would have been necessary had England attempted to model her new Poor Laws on those of Scotland.

The Elements of Public Administration

A Dogmatic Introduction

By B. W. Walker Watson

[*Being the Winning Essay in the Haldane Essay Competition, 1931-1932*]

"I do not choose a subject necessarily because I think I know a great deal about it, but rather because I have at various times put myself questions to which I do not know the answers and the choice of a title to cover them forces me in the meantime to find the answers if I can, or at any rate to determine the limits within which answers are in fact likely to be available, and the area over which detailed or *ad hoc* inquiry is necessary before satisfactory answers can be completed."—Sir Josiah Stamp.

NOT many years ago Viscount Haldane referred to administration as a science as well as an art, and Sir John Anderson stressed the difficulty of deciding whether it is possible to mark off public administration in such a way as to enable a useful study of it as a science to be undertaken. In the meantime research has been proceeding apace, the Journal of the Institute of Public Administration has been accumulating its volumes, and university courses have multiplied. The material is at hand and the time ripe for a reasoned review of these general issues.

In the course of his career a Civil Servant may ask himself many a puzzling question and receive only "a dusty answer," or none at all. He may wish to know whether the jumbled and scattered Civil Service is really the chaos it appears to be; what the scope of administration may be; whether its borders will ever cease to extend; whether its nature is akin to science or art, or both, or neither; whether the other administrations of the world differ much from it, and, if so, how and why; whether any ordinary human being can possibly see any administration as a whole, either as a chaos or an organism; whether departments spring up like seeds blown by the wayside or according to plan; whether their form can be pruned on simple palpable lines; and whether there is any rhyme or reason in thinking that the many i's and t's of administration can ever be properly dotted and crossed.

It would seem that the most fundamental of all these questions, whether public administration is a science or an art, must first be decided as a condition of answering the remainder. Without entering

into exhaustive definitions of those debatable terms, it may at least be assumed that science is impersonal and art personal; that the one is logical, the other psychological; the one knowledge, the other wisdom. In short, science concerns itself with common facts, and art with uncommon sense in interpreting and using them. The data of government activities are innumerable, and the number of government servants, the Press never omits to remind us, is legion. Given both facts and persons it is clear that there must be both a science and an art of public administration. Further, every art is dependent upon a technique or science as its first essential study, and, accordingly, this inquiry will be devoted entirely to the science of public administration, or, more strictly, to the elements themselves.

If there is one process which scientists would agree to glorify, it is classification. " Scientific classification seeks to formulate a scheme of mutually exclusive and collectively exhaustive categories based on the most important characteristics of the things concerned and on the actual relations between them." Classification is without doubt the initial and basic method of science, and it is certain that the development and progress of several sciences were retarded for centuries for want of satisfactory classification covering the areas of investigation. In the history of every art there has been an adolescent period in which the scientific side was not adequately recognised, and it is not ungracious to pioneers and research workers to suggest that history has repeated itself in the art of public administration. Yet ultimately the science may well be destined to become the most vital and far-reaching of all the sciences, pressing the others into service in its ambition to secure the greatest happiness to the greatest number.

In proceeding to analyse and classify public administration into categories it must not be overlooked that government activity represents but a minor proportion of the communal activity of the country. There is a gigantic network of voluntary organisations covering almost every aspect of social life in every district, and although much of it lacks significance as a ground-work for serious study, the rest of it is too important to be entirely ignored as a possible subject of State attention in the future or as a supplement to State activity at present. Some idea of its ramifications may be indicated by instancing a small area like Southend-on-Sea, where the administration of social life is maintained by no less than five hundred voluntary associations, many of which are linked up with similar bodies in other parts of the country. Mr. Stanley Baldwin was not speaking idly when he ventured a prediction two years ago. " Democracy will take on new forms. The tendency of the last few years to frown upon voluntary effort will be reversed. The rich and varied

life of spontaneous groupings will be recognised not as a weakness but as a strength to the State."

With these things in perspective several promising approaches to the new science present themselves. In the first place the scope of State administration needs to be marked off. This may best be done by tracing the successive stages in the life history of a political idea, from the birth of the social necessity concerned and its recognition by the philosophers, to its final satisfaction by departmental action. The following table, with fuller development, will show where State administration is concentrated on its own procedure and where it is merged into essential study or into academic interest:—

I.—Life of a Political Idea

Social Need.	Administrative Stage.
Philosophical Stage.	Executive Stage.
Conscious Stage.	Clerical Stage.
Political Stage.	Manual Stage.
Legislative Stage.	Social Satisfaction.

An expression of a totally different point of view, as serious as it is comic, recently appeared in a London newspaper. "We may not be the *best*-governed country; we may not be the *worst*-governed country; but, by Jehoshaphat, we are the *most*-governed country." This is the attitude of the private individual, whose reactions to the incidence of administration are in danger of being ignored by officials having contact with his affairs even before he is born and after he is dead. It is but a moderate form of Ibsen's dictum that the State is a curse to the individual. The plain man of to-day is more self-conscious than at any time in history, and he knows what no civilisation has yet remembered—that the State was made for man and not man for the State. A few random examples will show how the State is concerned with him, for good or ill, at all periods of his legal existence:—

II.—Personal Incidence of Administration

Ante-natal—Maternity benefit.	Manhood—Income Tax.
Birth—Registration.	Old Age—Pension.
Infancy—Vaccination.	Death—Registration.
Childhood—Education.	Post-mortem—Probate.
Youth—Insurance.	Posterity—Public Trustee.

Viscount Milner's motto, "Cultivate Humanity," must indeed be carved in vivid letters "over the gates of that great College of the Science of Public Administration which you are some day going to build."

Passing on to the obverse point of view, we can analyse the State's incursions into the various phases of national life and classify them according to the extent of intervention, ranging from complete control and management down to complete non-intervention. Apart from its academic worth this method has a practical value in the discussion of specific subjects, such as the treatment of public utilities. The table gives instances which illustrate degrees of government action or interest:—

III.—State Intervention in National Life

Control and Management—Postal Services.	Contract—Supplies.
Control—Broadcasting.	Restriction—Factories.
Assistance—Universities.	Regulation—Gas Supply.
Privilege—Companies.	Registration—Companies.
Trusteeship—Legacies.	Voluntary Effort—Boy Scouts.

It may be added that it is not unusual for the State to seek the advice and co-operation of the more responsible voluntary organisations, and in fact this was almost a practice during the Great War.

These three schemes may be interesting as approaches to the subject, and in so far as they are conducive to a proper scientific attitude. But they deal only with the scope, incidence and degree of administration, and not with its nature. Something more fundamental is required, an analysis of administration itself. It may seem a bold claim that all the multifarious activities of executive government can be grouped into a small number of " mutually exclusive and collectively exhaustive categories." Yet the table which follows will, it is believed, reveal no overlapping and no omissions, even under the most searching tests, and the scheme is complete without making use of that bugbear and rubbish-heap of classification, the " Miscellaneous " category. Briefly, all the aspects of national, local, imperial and foreign administration are reducible into ten basic functions, no more and no less.

IV.—Functions of Public Administration

Political.	Social.
Legal.	Economic.
Financial.	Foreign.
Defensive.	Imperial.
Educational.	Local.

These are the real and fundamental elements, and they are applicable to the official and voluntary activities of any country. Like chemical elements they are found in varying combination with each other, and in every combination one element is seen to be pre-

dominant. Thus, imperial relations have their political, defensive, economic and other aspects; education has its financial, social and local sides; local government deals with policies, social matters and so forth.

To the student, and we are all students, the names of the ten elements may well prove to be magic words, the *open sesame* to a clearer understanding of, and to a more progressive research over, the whole area of public administration as well as any selected portion of it. The Committee on the Machinery of Government, 1918, failed to find just the right formula, which, as will be seen, can open not only the outer door, but also the inner door and even a third, where necessary.

Before proceeding to justify this optimism it is useful to visualise by means of a simple geometric figure the entire field of the new science. Imagine a number of concentric circles divided into segments by a number of lines radiating from the common centre. State activity diminishes zone by zone from the centre outwards, and voluntary effort diminishes zone by zone from the outer circumference inwards; and the segments represent the different functions of public administration. Without pressing the illustration too far, the figure may be taken as picturing Tables III and IV in combination, and producing a pattern of communal activity over the whole area of public administration. At its centre is the sovereignty of the executive power of the State, the second of the three sovereign powers so famously defined by Montesquieu as " Ces trois pouvoirs, celui de faire des lois, celui d'exécuter les résolutions publiques, et celui de juger les crimes ou les différens des particuliers." (*De L'Esprit des Lois,* Livre XI, Chapitre VI.)

The existence of an ordered design is thus postulated. If proof is needed it will be found in the accompanying Functional Chart, which classifies according to the ten elements *all* the Central and Local Government Authorities, together with a *few* representative semi-official and voluntary bodies shown in italics. But this is only the first stage of analysis. By a process which is probably a new departure in classification, Table IV can be again applied in a second stage of analysis, the division of each Authority into its own elements, one of which will be predominant, or primary, and the remainder secondary to it. In the Branches of well-organized Departments even a third stage of sub-division is possible, once more exemplifying the ancient esoteric doctrine, " As above, so below." The practical bearings of these considerations will be discussed later. In the meantime attention must be confined to the facts as we find them, and to this end a brief commentary on each of the ten functions will be appropriate.

The Political Function. Whatever the jurists have had to say regarding the nature of sovereignty, Bagehot, Anson, Lowell and other writers have made it clear that in practice the Cabinet is the effective mainspring of the Constitution, the hyphen between the legislature and the administration, being born of the one to function through the other. The British race can boast of a genius for functional organisation and, consciously or subconsciously, has met the expanding needs of society by evolving through the centuries a system of administration undeniably expressive of that genius. The national character works in that way, and to attempt to make it work in any other way would be to kick against the pricks. In spite of the amazing extension of State activities, in spite of emergencies and the predilections of Ministers, the pattern of functional administration stands out for all to see, and the primary policies of Cabinets continue to be executed by machinery assembled more or less faithfully to that specification. Much the same position obtains lower down the scale, where the heads of Departments or the members of Local Government Councils frame secondary policies and carry them out by means of functional machinery.

The Legal Function. One of the difficulties of classification is that the three sovereign powers of the State are not, severally, quite coincident with the three State bodies which exercise them. Nevertheless, it would be true enough to say that the administration undertakes the duties of government not carried out by the legislature or the judiciary. In addition, therefore, to the purely executive side of law and justice, and of the Royal prerogative, this function includes many quasi-legislative and semi-judicial powers, which have latterly been condemned in an authoritative quarter as "The New Despotism," The sting of that public criticism is now being partly drawn by the parliamentary confirmation required to cover certain Departmental "legislation," as in the Board of Trade Orders issued under the Abnormal Importations (Customs Duties) Act of 1931. On the other hand, it receives added point in the Courts, when, for example, it is decided that the Minister of Transport has no judicial power to assess compensation under the Electricity Supply Act, 1919. [*Note.*—Since the submission of this paper, the Report of the Committee on Ministers' Powers has been published by the Stationery Office, Cmd. 4060, 2s. 6d. net.]

The Financial Function. This subject has bristled with debatable theories all the way from Adam Smith to Major Douglas, but there can be no dispute that money is the root of all administration. It is not mere purchasing power, as the economists have it; it is Power. This is all the explanation required to account for the influence of the Bank of England, and the dominating position of the Treasury amongst the Departments. The problems connected with expendi-

ture are probably greater even than revenue problems, for the more the State spends the wider the distribution of money and the more the individual spends; and it is one of the tasks of the Treasury to confine this sequence of public and private expenditure within the limits of national solvency, by advice to the Cabinet and by the restraint of Departments. At the same time " The business of Parliament remains to control policy, its business with administration to judge and appraise after the event." The secondary aspect of the financial function is represented by the financial branches of Departments and the financial committees of Local Councils. Directly or indirectly, the taxpayer feeds the one, the ratepayer the other, and these are the same person.

The Defensive Function. Defence is a term diplomatically understood among nations as not excluding possibilities of offence, whether by land, air or water. The question of disarmament is simply a negative and secondary side, whilst police protection is a local and secondary aspect of the function.

The Educational Function. This is not the occasion to compare the rival methods of Pestalozzi, Froebel, Herbart and the Dalton Plan, or to discuss the ever-topical antitheses of vocational versus liberal education, modern versus classical training, and knowledge versus mental discipline. Consideration of the subject can be confined all too easily to the purely scholastic view. There are other, if less extensive, aspects, for in administration this function begins operations at a stage earlier even than the teaching of an alphabet to infants. Sovereign power resides at the centre of things and, like a sound-wave, expresses itself outwards; scholastic education is on the surface of its sphere. On the principle of " first things first," the educational needs of the Departments must be given precedence. Before administrative action can be taken, and indeed before policies can be framed, facts, statistics and theories have to be marshalled for interpretation and judgment, experts examined, advisory bodies consulted or Royal Commissions of Inquiry appointed. This self-teaching of the Departments, whatever their particular functions may be, is essentially antecedent to State contact with the Public, and is thus a preparatory but highly important exercise of the educational function of government. Nor should it be overlooked that, extraneous to the work of schools and colleges, a vast output of official publications and radio broadcasts provides information and enlightenment to the nation. The maintenance of libraries, museums, art galleries and the like serves a similar purpose, whilst a mass of commercial intelligence is collected and made available to the trading section of the community. In one way or another every person in the country comes within the range of this function.

The Social Function. The keynote is the welfare of the individual. Man has a body to feed, clothe and shelter, to exercise and keep in health; a mind to relax, entertain and recreate; a spirit to quicken and sustain. If through disability of self or fortune these natural needs are not being met, the State or other organisation proffers assistance. In these matters the State long ago developed a rudimentary conscience which is now in process of rapid growth and concerns itself more and more with health, sanitation, pensions, charity and religion. But there still remains a large field where organised voluntary effort can and does supplement State action, and some of this energy is being harnessed by the National Council of Social Service, whose published handbook must seem an extraordinary record of activitiy to the most hardened social student.

The Economic Function. The business of a government is to govern. A government which intervenes in a trade monopoly finds itself in a different and difficult world, with conditions and a technique of its own. The problem is, how to govern that world without entering it, to maintain control without becoming entangled in technical management. How far the problem is being solved may be seen by examining and comparing the constitutions of the Post Office, the British Broadcasting Corporation, the Central Electricity Board and other public utilities. Two other features require special reference. Employment is so closely involved with other economic aspects that it is impossible to isolate it as a separate function, in spite of its importance. Employment includes recruitment and conditions of labour, and represents only one of several directions in which the economic function of government is exercised. To those who may object that finance should be considered a branch of economics, the heads of the Bank of England and the Bank of Montreal have not long ago both replied, in effect, that they are bankers, not economists.

The Foreign Function. As agent of the Crown the Foreign Office has intercourse with foreign States either through their representatives here or through our representatives abroad. The Secretary of State negotiates all treaties, protects British residents abroad and demands satisfaction for their injury. He or his nominee is a member of the Council of the League of Nations. The Committees of the League are an excellent example of classification in accordance with the ten functional elements of administration.

The Imperial Function. The Empire consists of territorial units in various stages of attachment to, or detachment from, the Mother Country. By the recent Statute of Westminster the Dominions have been made co-equal in constitutional status, not only with each other but also with the United Kingdom. At the other end of the scale certain Mandated Territories hold a status so insignificant that

their imports into this country are not even entitled to imperial preference in Customs duties imposed before the current year.

The Local Function. Local Authorities derive their powers from statutes which, through some score of Central Departments, place certain limits and restraints upon the jurisdiction of those powers. They are not strictly agents, however, either of Parliament or of the Central Departments, but are directly responsible to their own electorate, whose agents they are. Fundamentally the relations between the Local Authority and the Departments are of the nature of a partnership, with the former the predominant member. It is a fluctuating partnership. A hundred years ago this country consisted of parishes, but progress in communication is shifting physical borders, and in another hundred years the whole country will for certain local purposes be one parish. The thought is a momentous one for Local Government. Now is the time to segregate the intrinsically local from the potentially national interests so that the transition shall suffer no time lag. One of the necessities of the near future is a combined service of well-educated and transferable officials, recruited through one channel, to minister to these broadening interests.

" Every science proceeds upon the assumption that there is some sort of order in the phenomena with which it deals, a discernible ordered pattern, showing itself in dependable laws or tendencies, which are discoverable by careful observation and analysis." The discernible ordered pattern should now be in evidence, and it only remains to formulate the " laws " which analysis has already uncovered:—

Law I. The Administration, Central and Local, is an organic body constitutionally evolved for the performance of the executive functions of government.

Law II. The executive functions of government are ten in number: Political, Legal, Financial, Defensive, Educational, Social, Economic, Foreign, Imperial and Local.

Law III. Each executive function of government is allocated to a separate Authority or group of Authorities of the State.

Law IV. Each Authority, in addition to its primary function, performs other executive functions of government in a secondary degree, as and when expedient.

These laws are the essence of the facts of public administration in this and other countries, and their inevitability is their own proof. If they are simple, that is their virtue. On these four foundation-stones it will be possible to erect a new and complete science, self-contained and distinct from any other. Such a science will study systematically the origin, principles, evolution and machinery of each function, primary and secondary. It will set problems and answer

Function.	No.	Subjects and Authorities.
0 POLITICAL		POLICY, MACHINERY OF GOVERNMENT, GENERAL PRINCIPLES.
	00	The Cabinet.
	01	*Political Organisations.*
1 LEGAL		LAW AND JUSTICE, PREROGATIVE, REGULATIONS, APPEALS, AGREEMENTS, ARBITRATION, TREATIES, CONVENTIONS.
	10	The Privy Council.
	11	Supreme Court of Judicature.
	12	Home Office.
	13	Director of Public Prosecutions.
	14	Land Registry.
	15	Public Trustee.
	16	Scottish Office.
	17	Scottish Legal Offices.
	18	Industrial Court.
	190	*The Bar.*
	1	*The Law Society, Etc.*
2 FINANCIAL		REVENUE, EXPENDITURE, AUDIT, BANKING, CURRENCY, DEBTS, CREDITS, GRANTS, LOANS, REPARATIONS, RATING, VALUATION.
	20	Treasury.
	21	Customs and Excise.
	22	Inland Revenue.
	23	Exchequer and Audit.
	24	Government Actuary's Department.
	25	National Debt Office.
	26	National Savings Committee.
	27	Paymaster-General's Office.
	28	Royal Mint.
	290	*Bank of England.*
	1	*Stock Exchange, Etc.*
3 DEFENSIVE		DEFENCE, ORDER, DISCIPLINE, DISARMAMENT.
	30	Admiralty.
	31	Air Ministry.
	32	War Office.
4 EDUCATIONAL		EDUCATION, RESEARCH, INTELLIGENCE, RECORDS, STATISTICS, PUBLICATION, CONSULTATION, ADVICE AND INQUIRY.
	400	Board of Education.
	1	Scottish Education Department.
	410	British Museum.
	1	British Museum (Natural History).
	2	Imperial War Museum.
	3	London Museum.
	4	National Gallery.
	5	National Portrait Gallery.
	6	National Gallery of British Art.
	7	National Galleries (Scotland).
	8	National Library (Scotland).
	9	Wallace Collection.
	42	College of Heralds.
	430	General Register Office.
	1	General Register Office (Scotland).
	44	Government Chemist's Department.
	45	Department of Scientific and Industrial Research.
	46	Department of Overseas Trade.
	47	Public Record Office.
	48	Stationery Office.
	490	*Royal Commissions of Inquiry.*
	1	*Universities.*
	2	*General Council of Medical Education.*
	3	*The Press.*
	4	*Institute of Public Administration, Etc.*

Function.	No.	Subjects and Authorities.
5 SOCIAL		HEALTH, DESTITUTION, CHARITY, PENSIONS, RECREATION, RELIGION.
	50	Ministry of Health.
	51	Department of Health (Scotland).
	52	Ministry of Pensions.
	53	Charity Commission.
	54	Friendly Societies Registry.
	55	Ecclesiastical Commission.
	56	Welsh Church Commission.
	57	*Established Church.*
	58	*National Council of Social Service.*
	59	*Sports Organisations, Etc.*
6 ECONOMIC		TRADE, COMMERCE, INDUSTRY, PRODUCTION, TRANSPORT, COMMUNICATION, EMPLOYMENT, SUPPLIES.
	600	Board of Trade.
	1	*Trinity House.*
	610	Post Office.
	1	*British Broadcasting Corporation.*
	2	*Imperial and International Communications, Ltd.*
	620	Ministry of Agriculture and Fisheries.
	1	Forestry Commission.
	2	Agricultural Department (Scotland).
	3	Fishery Board (Scotland).
	630	Civil Service Commission.
	1	Ministry of Labour.
	640	Ministry of Transport.
	1	*Central Electricity Board.*
	650	Development Commission.
	1	Public Works Loans Commission.
	66	Mines Department.
	67	Office of Works and Public Buildings.
	680	Commissioners of Crown Lands.
	1	Duchy of Cornwall.
	2	Duchy of Lancaster.
	690	*National Whitley Council for the Civil Service.*
	1	*Federation of British Industries.*
	2	*Trades Union Congress, Etc.*
7 FOREIGN		FOREIGN AFFAIRS, LEAGUE OF NATIONS.
	70	Foreign Office.
	71	*League of Nations, Etc.*
8 IMPERIAL		DOMINIONS, COLONIES, PROTECTORATES, INDIA, MANDATED TERRITORIES.
	80	Colonial Office.
	81	Dominions Office.
	82	India Office.
	83	*Crown Agents for the Colonies.*
	84	*High Commissioner for India.*
	85	*Empire Marketing Board.*
	86	*Imperial Conferences.*
	87	*Imperial Committees.*
	88	*Imperial War Graves Commission, Etc.*
9 LOCAL		LOCAL AUTHORITIES, PUBLIC UTILITY COMPANIES.
	90	Administrative County Councils.
	91	County Borough Councils.
	92	Borough Councils.
	93	Urban District Councils.
	94	Rural District Councils.
	95	Parish Councils.
	96	Parish Meetings.
	97	Justices of the Peace.
	98	Joint Authorities.
	99	*Public Utility Companies, Etc.*

them. It will draw freely upon all the other sciences, just as astronomy draws upon mathematics, or television upon optics, and in doing so will strengthen rather than weaken its integral character. Soon the first of a library of authoritative text-books will appear, and the Science of Public Adminstration will have " arrived."

But let us return to our laws. If they seem academic in form, their implications regarding the machinery of government are immediately practical. Even at this stage a glance at the chart which tentatively illustrates them shows that a more compact Cabinet is desirable and feasible, each Minister being supported in the background by a sub-cabinet of Under-ministers from his Departments. The national financial accounts could with advantage, perhaps, be framed on the same lines. Then there is the possibility of securing great economy and greater efficiency by the amalgamation of Departments. Moreover, functional analysis will bring into the light the existence of secondary functions and disclose any mis-allocation or usurpation due to bad departmental organisation. Misplaced work can be transferred to its natural quarters, and work arising out of new legislation can be correctly placed once and for all.

Looking in other directions, it should be possible for Royal Commissions and Committees of Inquiry to apply themselves to a more logical form of agenda; any administration, British or foreign, can be viewed in whole or in part for comparison with any other; the table of contents is almost ready in advance for text-books on the subject. The Dewey decimal system is peculiarly adaptable to this ten-fold classification (it is incorporated in the accompanying chart), so that research workers, librarians and others can sectionalise their labours, and docket, index and file their collected information. One important possibility must, in conclusion, be accorded special mention: university courses and examinations need no longer be, as they have necessarily been hitherto, a hotch-potch made up from portions of cognate sciences.

More than enough has been said to justify the basic classification of the State's executive powers. This paper opened with a series of pertinent questions, and, in seeking to answer them, has perhaps indicated a new science. Yet nothing in it is new except the manner of its presentation, and the material used is available to all. The treatment alone is responsible. Scientific method reduces chaos to order, turning complexity into simplicity; but its greatest value is that it releases vision and imagination. Discoveries and inventions do not occur, even accidentally, except to scientific investigators, and it should prove a precious inspiration to feel that great developments lie in the future of administrative science, comparable with the internal combustion engine or the thermionic valve as contributions to the welfare and progress of mankind.

Notes

Graham Wallas[1]

AMONG those out of whose ideas and aspirations the Institute of Public Administration was created, and who gave it counsel and guidance in its early days, three names stand out pre-eminent—Haldane, John Lee, and Graham Wallas, whose loss we mourn to-day.

The grounds of their several interests in the formation of such an institution were not the same. To Lord Haldane it was to be, before everything else, an instrument for what he would call " staff work " in the business of government—for promoting calm, dispassionate, and realistic thought and study of the problems of government and governmental organisation which he saw arising in the post-war world. In John Lee's fertile and fervid mind it took shape as a means by which the public services could teach all that they knew about the organisation and management of human activity to any who would listen. Always he was possessed by the conviction that the public in general, and industrialists in particular, could learn much from the experience, the achievements, and the failures and omissions of those services. It was to be above all a clearing house of ideas: a source of information about the problems of management.

Wallas' interest in the Institute sprang from somewhat different considerations. His various contacts with the Civil Service, especially those which he had gained at the London School of Economics and as a member of the MacDonnell Commission, had brought to his mind a deep conviction that there was in the middle and lower ranks of the Service, especially among the younger men, a large fund of creative ability—of capacity for constructive work and thought—which under the prevailing traditions failed to get any opportunity to make the contribution of which it was capable. It was not, as he would say, " paid to think." He saw in the Institute, in alliance with the Universities—London University in particular—an educational instrument in the fullest sense: one which should fund and correlate the mass of practical experience which the public services possess but cannot publish, should deduce and elaborate principles, and by doing so should give opportunity, scope, and assistance to all

[1] For an appreciation of Professor Graham Wallas' life and work the reader is referred to the issue of *Economica* (published by the London School of Economics) for November, which will contain a full report of the speeches made by Sir Arthur Steel Maitland, Sir Josiah Stamp, Lord Passfield, Sir William H. Beveridge and Professor Harold J. Laski, at the Commemoration Ceremony which will take place at the London School of Economics on Wednesday, 19th October.

who sought to promote or improve in any way the art and machinery of government—especially the junior men in the Services.

It was with this object in view that he gave his whole-hearted assistance to the establishment of an Academic Diploma in Public Administration—at first Internal, but subsequently made available to External students also. To his mind its establishment was not so much a good thing as an essential thing, if the Institute of Public Administration was to fulfil its purposes. There were those who wished to see it develop its own system of examinations and credentials, possibly even its own teaching organisation. In Wallas' view this would have been a profound mistake. He recognised the difficulties—he was indeed far too open-minded a man not to see both sides of any question : but he was also convinced that the breadth of view, the freedom of thought, and the high standards which he demanded could only be secured, permanently and beyond doubt, through academic institutions working in contact with public servants.

As a co-opted member of the Council of the Institute from its earliest days, Wallas placed his counsel and his influence freely at its disposal. Though he did not often attend Council meetings—there was indeed no need for him to do so, and it was not expected of him—his advice and help were always available and always readily given. To the members generally he was perhaps less well known: but few who heard it will have forgotten his Inaugural Address on "Government" given in London in 1927 (PUBLIC ADMINISTRATION, January, 1928). It was a characteristic performance. He used to the full his ability to dispense from the large resources of his knowledge without any parade of learning. He had indeed a very thorough familiarity with the history of the British Civil Service: but he handled his subject with a lightness of touch and a vein of humour that appealed greatly to an audience of public servants. His address disclosed very clearly the foundation of his interest in the Institute—his belief in the need, under modern conditions, of giving scope and opportunity to ability in the public services wherever it may be found.

The torch he lit and carried has been handed on. Relations have been built up between the Universities and the Institute which promise to endure and to develop. Much remains to be done: and only time and favourable circumstances will see the completion of Graham Wallas' work.

The Institute is proud to pay its tribute to a wise, gracious and far-seeing influence: to one who served it well because he saw in it the means of attaining ends which his familiarity with the Civil Service showed him to be necessary and in which he passionately believed.

 H. N. B.

Notes

The Summer Conference of 1932

THE subjects chosen for the 1932 Summer Conference represented an attempt to concentrate on matters of current interest, and, in some degree, to break new ground. " Departmentalism and Efficiency," " The Practical Limits of Taxable and Rateable Capacity," " The Co-ordination of Economic Policy in Government Departments "—these are subjects which involve the fundamentals of administrative work. They raise very broad issues, they involve to some extent the philosophic basis of administrative function and organisation, and, though of great interest at the present time, they cannot be described as in any sense popular.

To the distinguished authors of the various papers the Institute owes its gratitude. It must, however, be confessed that, at any rate in the writer's opinion, the discussions on the whole did not altogether do them justice. We wandered at large, we were conscientiously practical, but we did not develop the major and more general significance of the subjects under discussion. This was, perhaps, in any case more or less inevitable, especially in the absence through service exigencies of some of those whose contributions to Conference discussions are always of special value. But debate never flagged, and the experiment was well worth trying.

The best discussion was that on " Departmentalism and Efficiency," introduced by Sir Josiah Stamp. His paper was compounded of a suggestive excursion into the science of organisation and an account by General Charles G. Dawes of the principles and methods which he followed when placed in charge of the new Bureau of the Budget at Washington during a critical period immediately after the War. The underlying problem is as old as organisation itself: how are you to make the best use of specialised—not necessarily technical—knowledge, thought and experience, while retaining a single responsibility for the execution of the concrete job. The literature of the Scientific Management movement is full of this problem. Taylor, with his five " functional foremen," each representing a specialised type of experience and each carrying responsibility for the job so far as his function is involved, represents one extreme of theory: but the theory runs too strongly counter to human nature to win general adoption. On the other hand, as Sir Josiah Stamp pointed out, the growth of scientific knowledge and observed and classified experience has been so great that no single executive can be expected to be an expert on every aspect of his job: yet, because it is " his job " it is apt to seem a confession of weakness to admit that someone else knows more about any part of it than he himself does. " Not many years ago," says Sir Josiah, " . . . . . statistical and economic intelligence were regarded as the

province of any of the staff, quite interchangeable and generally given to the weaker end. . . . . Nowadays it is recognised that a high degree of natural aptitude, specialisation, and outside co-ordination are the truest economy." A man, though a good administrator in his particular field, may be but a poor manager of the personnel on whose efforts and skill, working under his direction, he has to depend; but he is often naturally reluctant to call in the specialist personnel manager—it would look too much like a derogation of his own authority. So, it is argued, the supreme management must increasingly override the natural desire of the head of a department to manage his own affairs, in matters suitable for expert *ad hoc* investigation, and put in, by committee or official, a special inspection or agency of criticism and change. At this point the general problem became narrowed down to the more special problem of the expert in " efficiency."

Discussion, admitting the principle, turned to some extent on *how* this should be done. Sir Josiah was at pains to assure us that it was usually necessary to impose it from without (or above), and that it normally meant (at any rate until the practice became well established) a dog-fight. Most of the speakers preferred persuasion to force: some even would forgo the advantages of expert inspection from without unless it were sought by the executive head concerned. The method of limited experiment—" seeing how it would work "—found favour. Speakers from the Local Government side seemed to expect greater difficulties in any sort of external expert investigation into the organisation and working of their departments than did the Civil Servants, who are perhaps more inured to these external invasions whether expert or not. This attitude seemed to be another by-product of the committee system of municipal government. Our visitors from the United States, following the lead of General Dawes, laid stress on Budgetary control as the only effective instrument for introducing anything in the nature of an external and expert " efficiency audit." We were in danger of passing at this point into a discussion of Treasury control, as exercised in this country; but General Dawes' memorandum had brought out so clearly the difference between budgetary control as he had conceived it when Director of the Bureau of the Budget, and the British system of Treasury control, that the debate escaped being narrowed down in this way. Budgetary control, as Professor May aptly remarked, means not merely setting up a plan of expenditure and sticking to it, but, rather, setting up such a plan and not sticking to it. This sums up in a sentence the American point of view.

More might have been made of the difference between occasional intervention by the specialist to see how things are being done, and the method of continuous interference or control. The surveys or

field studies which are becoming common and, as we were told, increasingly valuable and effective, in the United States, seem to represent a way of making intermittent use of the expert which has much to commend it. A desultory but always interesting discussion concluded with a realist summing up by Sir Austen Chamberlain from the chair.

" The practical limits of taxable capacity," discussed on Saturday, proved a little bit beyond us. Topical as it certainly is, the subject does not lend itself to discussion in a general conference. As most of those present were engaged in spending money rather than in collecting it, there was much force in the comment of Sir Basil Blackett, who contributed the paper, that the Institute should rather address itself to the fundamental question whether we gave value for our services. The form of the answer to the question put is, he told us, " some proportion of the national dividend." At this point the inquiry bifurcates—on the one hand into the problem of the relative advantages or disadvantages of alternative forms and methods of taxation; on the other, into that of the social value of the expenditure of the resources so collected. Here is food enough for thought, and if the morning's discussion, and especially Sir Basil's contribution to it, has served to provoke that thought, the time will not have been wasted. It will at any rate have served to direct the minds of those who took part in the Conference to the fact that there are limits, that the severe strain which is being put in this and other countries on the taxable capacity of the community may amount to what engineers call " testing to destruction," and that the subject calls for thought and study by those who spend, as well as those who impose, taxes. To that end Sir Basil's paper invites more than one reading.

The Conference addressed itself to the " Practical limits of rateable capacity " in a somewhat different spirit. Mr. Frank Hunt, who introduced the subject, presented a valuable piece of statistical analysis of the development and present position of rating finance in this country: and from it he reached conclusions which in his view were reassuring. Possibly the Conference was too easily reassured: at any rate it was unfortunate that no one from a distressed area happened to be present. The view taken of the subject seemed to be a little restricted in consequence, and not enough attention was paid to long-run tendencies. Industry and population are slow to move: but will they in the long run remain in a locality where the local advantages to them are less than the differential burden of rates? Does not a differential increase in poundage tend in the long run to produce a corresponding reduction in assessable value, and so to establish a point of saturation—and stagnation, leading rapidly to decay? Does not the recent trend of industry towards southern England suggest that long-run economic forces, which may have

something to do with the practical limits of rateable capacity, are at work? These subjects might have been more fully explored.

The Conference concluded with a spirited attack by Mr. Colin Clark on the methods by which the Government of the day is in this country provided with the means of elaborating its general economic policy, and in particular on the British method of preparing official statistics. He met with some criticism—of which he admitted the force—and some support: but he maintained that if we are not as black as he had painted us, we are certainly not angel-white.

The moral to be derived from an animated and interesting discussion seems to be this, that in this country we are apt to substitute for formal systems of co-ordination a sort of team-working habit which baffles the external observer, and which in his worse moments he will denounce as circumlocution. But it is not a complete or perfect substitute for a thought-out organisation, even at its best: and human nature is not always at its best. In fact, in the discussion of Mr. Clark's paper we were not very far removed from the subject introduced at the opening by Sir Josiah Stamp.

The Conference was rather smaller than usual, especially in respect of that element which has come to add so much to the interest of its proceedings—the visitors from overseas. We were, however, fortunate in the presence of an old friend in Professor May of the University of California, and a new friend in Mr. Donald Stone of Chicago. But if smaller than usual in attendance, the Conference was made memorable by the presence of Sir Austen Chamberlain, the President of the Institute. This record would be far from complete if it failed to acknowledge the graceful manner in which he presided over its discussions on the opening day, and entered into its less formal proceedings. He helped in many ways to create the enjoyable atmosphere which has always characterised these gatherings of the Institute.

H. N. B.

Recent Legal Decisions Affecting Public Administration

By F. A. Enever, M.A., LL.D.

SYNOPSIS

Settlements to save Income Tax; Stamp Duty on such settlements; Income Tax—Insolvent Estate; Bona Vacantia; Poor Law; Disqualification of Councillor; Injury at County Council's Juvenile Instruction Centre; Trees on Public Highways; Private Street Works; Caravan Dwellers.

Settlements to Save Income Tax

Efforts to avoid income tax and surtax by means of settlements under the provisions of sec. 20 of the Finance Act, 1922, have in

recent years become remarkably popular. The short effect of this lengthy section is that in order that income shall be deemed for income tax and surtax purposes to be the income of the person who obtains the beneficial enjoyment thereof, there must be no power of revocation in the settlement unless it is exercisable only with the consent of someone other than the wife or husband of the settlor, the settlement must not be for a period which cannot exceed six years, and if for the benefit of a child the settlement must not be for a less period than the life of the child though it may be a protected life interest. Would-be settlors, desirous of making settlements in favour of their children to avoid or reduce taxation, have in some cases been deterred from doing so by reason of the continuing obligation on their estates in the event of their predeceasing their children and also by reason of their desire to make such settlements freely revocable by the settlor in the event of circumstances arising which might render it advisable for him to do so. A doubt has been felt whether a settlement under sec. 20 could be made to operate only during the joint lives of the father and child, particularly in view of the fact that under sec. 20 (1) (*c*) the period must not be less than the life of the child and that under proviso (i) of sec. 20 (1) the provisions of sec. 20 (1) (*c*) do not apply to any income payable to or applicable for the benefit of a child during the whole period of the life of the settlor.

It has recently been decided by the Court of Appeal, affirming the decision of Rowlatt, J., that a settlement within the section can be made for the joint lives of the father and child and that a power of revocation by the settlor with the consent of persons named for that purpose in the settlement did not make the income that " which by virtue or in consequence of any disposition made, directly or indirectly, by any person . . . . . is payable to or applicable for the benefit of a child of that person for some period less than the life of the child " so as to prevent the income from being that of the beneficiary. (Watson's Trustees *v.* Wiggins, 174, *Law Times*, 122.)

Stamp Duty on such Settlements

It almost seems as if the Inland Revenue authorities had been carried away by a laudable desire to reimburse themselves on the stamp duty swings with part of what might be lost on the income tax roundabouts when they sought, as they did until the recent decision mentioned below, to assess the stamp duty on such settlements as those described in the last preceding article on the basis of an annuity in cases where the disposition provides for weekly or monthly payments, despite the decisions in Clifford *v.* Commissioners of Inland Revenue (1896) 2 Q.B., 187, and Jackson *v.* Commissioners of Inland Revenue, 87, *L.T. Rep.*, 269.

It has now been held, following the above-mentioned decisions, that a deed whereby a settlor covenants to pay his son during their joint lives £21 13s. 4d. a month is not a security for an annuity and that the proper duty payable in such a case is 12s. 6d., *i.e.*, 2s. 6d. for every £5 or part of £5 calculated on £21 13s. 4d., and *not* £6 10s. 0d., *i.e.*, 2s. 6d. on every £5 calculated on the yearly sum of £260. (Hennell *v.* Commissioners of Inland Revenue, 173, *Law Times*, 302.)

Income Tax: Insolvent Estate

The question whether the Crown's preferential claim for income tax could be assessed for the year ending the 5th April next before the testator's death and no other year or for any one year ending on any 5th April before the testator's death arose for determination as a result of the decision of the House of Lords in the same case (*Re* Cockell (1932) A.C., 365) that in accordance with sec. 33 (1) of the Bankruptcy Act, 1914, made applicable to the estate of a deceased insolvent testator by sec. 34 of the Administration of Estates Act, 1925, the Crown had priority in respect of arrears of one year's assessment of taxes over an executor's right of retainer. Sec. 33 (1) of the Bankruptcy Act, 1914, provides: " In the distribution of the property of a bankrupt there shall be paid in priority to all other debts (*a*) All parochial and other local rates due from the bankrupt . . . . and all assessed taxes, land tax, property tax, or income tax assessed on the bankrupt up to the 5th day of April next before the date of the receiving order and not exceeding in the whole one year's assessment."

At the date of his death the testator owed eight years' arrears of income tax and two years' arrears of supertax and the estate was insolvent.

Bennett, J., following the decision in Gowers *v.* Walker (1930) 1 Ch., 262, declared that the preferential claim of His Majesty for property or income tax could be made for property or income tax assessed for any one year ending on the 5th April before the testator's death. (*In re* Cockell: Jackson *v.* Attorney-General, 174, *Law Times*, 45; 76, *Solicitors' Journal*, 495.)

Bona Vacantia

An interesting decision has recently been given by the Court of Appeal determining the rights of the Crown to the undisposed of assets of a corporation dissolved before the coming into operation of the Companies Act, 1929. The facts were shortly as follows: A company was dissolved in 1916. The liquidator, who was appointed in 1910, considered a certain asset of no value and did not part with it to any person. This asset consisted of the equity of redemption of

certain leasehold properties, the properties having been mortgaged by the Company in 1899 for £4,325 to trustees. In 1913 the trustees gave notice calling in the mortgage, but the Company defaulted and the trustees appointed a receiver of the rents which were at that time insufficient to pay the mortgage interest in full, so the liquidator was reasonable in supposing that the equity of redemption was valueless. Owing, however, to the increased value of the mortgaged properties, the equity of redemption, if it still existed, had since become of substantial value and the surviving trustee issued a summons to determine whether the mortgagee was entitled to the property absolutely. The Attorney-General claimed that the equity of redemption had vested in the Crown as *bona vacantia*.

Sec. 296 of the Companies Act, 1929, provides that when a company is dissolved all property vested in or held in trust for it before the dissolution is to be deemed *bona vacantia*.

The Court of Appeal (Lord Hanworth, M.R., Lawrence and Romer, L.JJ.) held that sec. 296 was not retrospective, but (reversing the decision of Farwell, J.) that the Crown was entitled to the property as *bona vacantia*. The argument that the right of the Crown survived only when there was a trustee rested on a statement of Wright, J., in *In re* Higginson *v.* Dean (1899) 1 Q.B. 325, which was confessedly *obiter* and could not be supported (*Re* Wells; Swinburne-Hanham *v.* Howard, 48, *Times Law Reports*, 617; 174, *Law Times*, 65).

Another case on *bona vacantia* is worthy of notice here. A testatrix who was of illegitimate birth and had continuously since 1918 been of unsound mind, died without issue in 1932, having by her will, made in 1903, exercised a power of appointment, contained in a settlement made in 1892, the ultimate trust of which was in favour of her husband. The exercise of the power of appointment was preceded by the prefatory words " to the intent that this my will shall take effect whether I survive or predecease my husband." The husband predeceased the testatrix, having died in 1929 and by his will gave the residue of his estate to three persons in equal shares. The trustees of the settlement took out an originating summons to determine whether the appointment in favour of the husband took effect notwithstanding that he predeceased the testatrix. Clauson, J., held that the prefatory words in the will were insufficient, in the absence of a substitution of other legatees in the event of the husband predeceasing, to show an intention within the meaning of the authorities that the husband's estate should take the benefit of the appointed funds. There was, consequently, a lapse of those funds which went to the Crown as *bona vacantia*. (*Re* Ladd; Henderson *v.* Porter, 174, *Law Times*, 46.)

Poor Law

In an appeal on a case stated by the Recorder of Birmingham on the question whether a status of irremovability had been acquired by a pauper the facts were as follows:—On 10th July, 1931, a pauper women and her infant child became chargeable to the City of Birmingham. On 16th July her husband was sentenced at the Birmingham Assizes to six months' imprisonment for forgery, having been detained in custody since 10th July at Birmingham Prison. On 23rd November the Glamorgan County Council appealed against an order of the Birmingham City Justices dated 11th August that the pauper and her child should be removed to the County of Glamorgan. The legal settlement of the husband and his family was in Glamorganshire but from September, 1930, up to the time of his arrest they had been living in lodgings in Birmingham.

The Recorder found, in favour of the Birmingham Corporation, that the wife and child were not exempt from removal on the basis that if a common law principle ever existed that the husband and wife should not be separated it did not apply here, and that a status of irremovability could only be acquired under the Poor Law Act, 1930; also that the common law principle could not have applied in this case, there being no *consortium,* such as the alleged common law principle existed to preserve, where the husband was in prison. Against this decision the Glamorgan County Council appealed.

It was held on appeal (per Lord Hewart, C.J., Avory and Humphreys, JJ.) that the Poor Law Act, 1930, had superseded the common law principle, and that in any event that principle forbade only the separation of a wife from a husband with whom she was residing and that occasional visits by the wife, in the presence of an official, did not constitute a sufficient degree of *consortium* for the common law principle to apply. The appeal was dismissed. (Glamorgan County Council *v.* Birmingham Corporation, 174, *Law Times,* 123.)

Disqualification of Councillor

A roadman had for many years before 1st April, 1930, been employed by the Monmouth County Council on main roads in the Abertillery Urban District. In 1928, and again in 1931, he was elected a councillor of the Abertillery Urban District Council. On 1st April, 1930, the County Council became, under the Local Government Act, 1929, the highway authority for all " county roads," including main roads, all roads in rural districts and classified roads in urban districts, but under sec. 32 of the Act the Abertillery Urban District Council, the district having a population exceeding 20,000, claimed and became entitled to exercise the maintenance and repair of county roads in its district. As sec. 46 (1) of the Local

Government Act, 1894, disqualifies a person from being a councillor if he holds a paid office under the Council, the question arose as to who was the employing authority.

It was held that, being under the control of and bound to obey the orders of the Urban District Council, that authority must be regarded as his employer and that he was, therefore, disqualified from being a councillor of that authority under sec. 46 (1) of the Local Government Act, 1894. (Rex *v.* Davies, *ex parte* Penn and others, 174, *Law Times*, 123.)

Injury at County Council's Juvenile Instruction Centre

A case on the law of torts recently decided by the Court of Appeal deserves a short reference here by reason of the fact that a local authority was involved.

The plaintiff, an infant aged 17, was an unemployed person who, under the provisions of the Unemployment Insurance Acts, 1920 and 1930, was undergoing a compulsory course of instruction at one of the London County Council's instruction centres. He was ordered by the Council's instructor, who had 20 years' experience and held a first-class Army certificate, to participate in an organised game called " riders and horses." While doing so he fell and seriously injured his arm.

An action for negligence, on the ground that the game was so inherently dangerous that to order it to be played amounted to negligence, was tried at the Southwark County Court before a judge and jury and judgment was awarded for £1,000 for the infant plaintiff and for £30 for his mother, the other plaintiff in the action. There was no suggestion that the floor was defective and the instructor's evidence was that in his 20 years' experience he had seen the game played without serious accident.

The Divisional Court set aside the verdict, holding that there was no evidence that the game was likely to cause injury or that the instructor had reason to anticipate any resultant injury.

On appeal it was held (per Scrutton, Lawrence and Greer, L.JJ.) that there was no evidence to support the verdict. The appeal was dismissed (Jones and another *v.* London County Council, 48, *Times Law Reports*, 577).

Trees on Public Highways

The question whether a local authority is entitled to remove trees from public highways was decided affirmatively in Stillwell *v.* Windsor Corporation (173, *Law Times*, 435; 76, *Solicitors' Journal*, 433). The defendants had served a notice, pursuant to sec. 64 of the Highway Act, 1835, on the plaintiff requiring her to remove certain trees standing in public highways bounding her land, on the

ground that they were a danger and obstruction to the public. The plaintiff having failed to comply with the notice, the defendants cut down and removed three of the trees. Thereupon the plaintiff brought this action and obtained an interim injunction against the defendants. The motion was renewed and by consent was treated as the trial of the action. The defendants adduced satisfactory evidence at the trial that the trees were over 100 years old, that some were so diseased and decayed as to be a present source of danger to the public, that it was speculative whether they could be rendered less dangerous by treatment and reinforcement, and that they caused obstruction to vehicular traffic.

It had been decided in Coverdale *v.* Charlton (1878) 4 Q.B.D., 104, that an urban authority has, under sec. 149 of the Public Health Act, 1875, a certain right of property in the herbage growing in streets. It was, however, ingeniously contended for the plaintiff in the present case that the plaintiff's presumptive title to the soil of the roads *usque ad medium filum* included the trees thereon and that it should be presumed that the dedication of the roads to the public was subject to the exception of the areas occupied by the trees.

Clauson, J., in giving judgment for the defendants, stated that the roads had existed as public highways for a period to which, on the evidence, no limit could be fixed and it must be assumed that the trees had been planted on the roads either by the highway authority with the consent of the owner of the soil or by the latter with the privity of the highway authority, and that they were standing on highways over the whole width of which the public had rights of user. On the evidence they were justified in removing them and had a duty to do so even assuming that the plaintiff was right in her contention that she had a property in the trees. When, however, the Parish of Clewer, in which the roads were situate, was included in the Borough of Windsor, as it was in 1920, the effect of sec. 149 of the Public Health Act, 1875, was to vest the roads including the trees thereon in the defendants for the purposes of that section, with the result that the plaintiff had no property in or control over the trees at all. Further, in view of the decision in Coverdale *v.* Charlton, *supra,* it was difficult to decide otherwise than that the defendants had a similar right of property in the trees.

Private Street Works

The trustees of the E.A. United Methodist Church objected to their inclusion in the provisional apportionment in connection with the making up by the Ilford Corporation of a street under the Private Street Works Act, 1892, on the ground that the land which abutted on the street and which adjoined their chapel, but which was separated from the latter by a temporary close-boarded fence about

6 ft. high, was exempt from expenses under sec. 16 of that Act and sec. 1 of the Poor Law Exemption Act, 1833. There was a board on the land in question bearing the words " Site for Sunday School and Hall in connection with the United Methodist Churches." The trustees intended to commence erecting the Sunday School buildings as soon as certain amended plans were approved. The Essex Justices were of opinion that the land in question was within the curtilage and formed part of the site of the chapel and that the trustees should not have been included in the provisional apportionment.

On appeal by the Corporation it was held (per Lord Hewart, C.J., Avory and Hawke, JJ.) that there was no evidence on which the justices could find as they did. In order to be exempt the land would have to fall within the meaning of the word " premises " in the Poor Law Exemption Act, 1833, and in North Manchester Overseers *v.* Winstanley (1908) 1 K.B., 835, it had been held that " premises " could refer to buildings only. Further, a piece of vacant land could not be a " place " within the meaning of sec. 16 of the Private Street Works Act, 1892. (Ilford Corporation *v.* Mallinson and others, 173, *Law Times,* 281.)

Caravan Dwellers

The question whether a landowner could be held responsible for acts, proved to interfere with the comfort of the neighbours, done off his property by persons living on it came before the Court recently in Attorney-General at the relation of the Bromley Rural District Council *v.* Corke (*Times,* 29th July, 1932; 76, *Solicitors' Journal,* 593). The land in question was in a well-populated neighbourhood and on several occasions notices in respect of nuisances had been served on the landowner under the Public Health Act, 1875, sec. 94.

Bennett, J., held that bringing people to live on the land in caravans was an abnormal use to which to put it and that the defendant (the landowner) was under a duty to see that they did nothing injurious to the health or comfort of neighbours. A declaration was accordingly made by the Court that the defendant was under a duty to prevent persons, licensed by him to occupy the land, from depositing filth in the vicinity, breaking fences, allowing their horses to trespass and creating disturbances in the vicinity. An injunction was also granted.

Reviews

THE ECONOMIC AND SOCIAL OUTLOOK

The Intelligent Man's Guide Through World Chaos

By G. D. H. COLE. (Published by Victor Gollancz Ltd.) Price 5s.

ACCORDING to the author " this book is an attempt, within the compass of a single volume, to give the intelligent and open-minded citizen, who wants to understand how the world has got into its present plight but possesses no special economic training, the means of unravelling in his own mind the tangle of world economic affairs."

And it is an attempt which succeeds. But this intelligent, &c., citizen—more usually named the general reader—is much more interested in how to get out of the present plight than in how he got into it. Mr. Cole endeavours to meeet this demand also and to justify the preposition " through " in his title.

Within the last few months another distinguished writer, Sir Arthur Salter, has successfully essayed a similar task, and the wise general reader who reads both books will find the comparison interesting.

Probably the first thing that will strike him is the close parallelism in the analysis of technical matters. For instance in their explanations of the currency and credit problems, reparations and international war debts; tariffs, &c., the two authors walk hand in hand. Similarly both are convinced that the post-war endeavour to return to pre-war normalcy has been disastrous and that the present crisis marks the end of an economic era.

There are, however, significant differences in their analysis of the main features of the old régime, the foundations being prepared for a new economic structure of society, and consequently in regard to the structure to be erected on those foundations.

To Sir Arthur Salter " the distinctive feature of the system, which we need to emphasise as it passes from us, was its self-regulating and automatic quality. Over the whole range of human effort and human need, demand and supply found their adjustments without anyone estimating the one or planning the other. The individual producer pushed and groped his way to a new or expanding market. He rarely troubled to guess the total demand for his product; for the share of the market which he could capture was more to him than the total market in which he had to find his place."

Mr. Cole attaches great importance to this feature but he does not regard it as the hub of the old economic system. His view is that " under the system known as private enterprise profit is the only

possible means of getting goods and services produced; for all other forms of income, though they are equally the means of living to their recipients, make their appearance in this system as costs and therefore as deterrents and not incentives to production. It is true that monetary incentives may be offered to wage and salary earners in order to induce them to increase their output; but whether their doing this will result in increased production or a diminished volume of employment depends on the prospects of profits as estimated by their employers. Profit remains the pivot on which the entire system turns."

Then as to the foundations of the new economy Sir Arthur believes that " we need but the regulative wisdom to control our specialised activities and the thrusting energy of our sectional and selfish interests," and in his survey of world conditions he attaches great importance to the framework of international institutions which have been developing since the war. " Within this framework, itself based upon assured world peace, a framework at once strong and flexible, of a monetary system of credit, of world commercial policy, of industrial organisation and of world government, man can at last develop fully, and utilise justly, the resources now available to him."

Mr. Cole's attitude towards these developing international institutions is that they are essential to the relationship of Capitalism " the main task for those who believe in the rehabilitation of Capitalism is to guard it against the consequences of international disharmonies and lack of organisation. If Capitalism is to be reconstructed in the world as a whole it must be reconstructed on a world basis and mainly by measures of an international scope."

But Mr. Cole does not believe in the rehabilitation of Capitalism. In the first place it is not desirable, and even if it were desirable its permanent recovery is scarcely possible. He insists that " whatever is to be done must be done quickly if it is to be done at all. And the slow-moving machinery of international conferences and negotiations must be tremendously speeded up if it is to be used with any chance of success. Cumulatively the entire programme of capitalist reform involves so many obstacles and invites the hostility of so many vested interests, national and sectional, that its adoption as a whole seems infinitely unlikely and remote."

" Socialism," on the other hand, " is forced to be national in its measures . . . . . the world cannot . . . . . have international economic planning . . . . National planning comes first."

Then as to the goal of our endeavours, Sir Arthur declares: " Mine is no distant or ideal Utopia, beyond either the vision or the reach of the pedestrian. I have taken the system we know, suggesting how it might be strengthened where it is weak, repaired where it has crumbled, and rebuilt where new needs require addi-

tions to its fabric. It is our own system, in which we have grown up, that we must reform—and in part transform."

Mr. Cole, on the other hand, " is committed above all to an attempt to secure the fullest possible use of the existing resources of production so as to bring about a larger as well as a more equal distribution of incomes in the community." He therefore devotes considerable space to " the challenge of Russia." " The outstanding feature of the Russian economic system, as it appears to the capitalist world, is organised planning." But " in Russia planning is simple in at least one important respect. There is and can be for a long time to come no problem of a surplus of any important class of industrial goods . . . . But in a country like Great Britain the situation is much more complicated; for a large part of the industrial goods . . . . produced are made for export . . . . Moreover, in many cases this surplus would remain even if the standard of life were substantially raised; for people would want . . . . not more of the classes of goods of which there is at present a surplus capacity to produce, but other classes of goods and services which would either have to be imported or produced in larger quantities at home with the aid of new productive resources."

Furthermore in Russia " the old order has been destroyed; and there is no question of patching it up so as to make it work." But in Great Britain the " people neither wants revolution to-day nor can be made to want it by any kind of propagandist appeal . . . . it is the business of those who advocate ' fundamental changes ' to put their proposals into workmanlike shape, and to appear at the bar of public opinion with a showing of technical and administrative competence."

In his review of Sir Arthur Salter's book in the July issue of this journal Mr. Beales commented on his comprehensiveness, insight, and style. The requirements of a different ideal have enforced a slight variation in the boundaries set by the two writers as limiting the scope of their subject. As regards insight they are a perfect complement the one to the other. On the one hand there is Sir Arthur Salter with his great record of practical administrative effort yet possessed of a rare gift of knowing not only the tree upon which he happens to be working, but the character and dimensions of the whole wood. On the other hand Mr. Cole has spent his life surveying the wider landscape, and is yet possessed of a vivid realisation of the character and significance of the individual trees. His style, while it may not possess the warm glow of Sir Arthur's, is limpidly clear and seductively simple. Few have been blessed with comparable equipment for the exposition of any subject.

A. C. STEWART.

Reviews

An Outline for Boys and Girls and their Parents

Edited by NAOMI MITCHISON. (Published by Victor Gollancz.) Price 8s. 6d.

WHEN H. G. Wells produced his Outline of History he revealed to publishers a market which apparently is still far from being satiated. Hitherto outlines or simplified versions of any given subject had failed to arouse much enthusiasm among those for whom they were written, and publishers apparently shared the view of the experts that short roads to learning were sure roads to disappointment and disillusionment. The real fact was that hitherto short books were normally bad books. It has now been discovered that neither working people nor young persons can be fed on such stuff. That, as a work, the type of outline which is to meet the needs of this large and growing class of serious readers must not be inferior to those which are provided for more leisured or matured readers. In many ways it must be a superior product to the larger work. The outline must not be sketchy, it must deal with those aspects of a subject in which the writer finds his own source of inspiration; it must interest the reader; its aim must be to stimulate rather than to satisfy. Editors and publishers have therefore adopted the device of the composite book; a device which secures that each chapter can be allotted to a specialist, but which creates certain difficulties for the editor.

The present book—following the arrangement of the earlier Outlines of Knowledge issued by the same publisher—is divided into three parts—Part I " Science " (9 chapters, 383 pages), Part II " Civilisation " (9 chapters, 364 pages), and Part III " Values," which might with advantage be renamed " The Arts " (5 chapters, 138 pages).

It is somewhat difficult to put one's finger on anything that could be regarded as the outstanding characteristic of the book. Naturally each writer brings his own mentality to his or her task, but undoubtedly there is a spirit pervading the whole. In the science section one is conscious of a certain joy in the physical aspects of life, and a pride in man's power to know and utilise the forces of nature. There is no sense of wonder or fear in the approach to knowledge. There is the excitement of battle and the satisfaction of conquest. It is realistic.

Part II, which is chiefly concerned with the grouping of individuals in the family, the tribe, clan, nation, and other forms of community, and is consequently of special interest to readers of this journal, is dominated by the same spirit. Realism in this section, however, tends to degenerate into a mockery or contemptuous scepticism of everything which fails to find an obvious justification in either economic or physiological fact. This may be nothing more

than a reaction from the " count-your-blessings-one-by-one " school which up to a few years ago dominated English culture.

From this generalisation, however, one must exclude the chapter by C. Delisle Burns on " The Peoples of the World," and G. R. Mitchison's bright little essay on the Machinery of Government (which is good of its kind, but a lawyer's). These two chapters provide kindlier views of erring humanity than are to be found in some of the other essays.

Mr. Beales (normally known as H. L., but here introduced as Lance) for instance can see little that is good in the last thirty years. Those years have apparently been compounded of wars, revolutions, industrial strife, and disillusionment. From which like a veritable Jeremiah he calls his readers to repentance and righteousness—lest they perish, winding up with a modern slogan as the suggested rallying cry for his converts. " From new knowledge to new behaviour—that is the motto of the next thirty years, born in the throes of the violence of the first third of the twentieth century." No one, of course, can dispute the existence or importance of the violence of which Mr. Beales complains, but where in this sombre landscape are we to find the stone with which to build the new Jerusalem?

There is no doubt, however, that this book is going to have a great vogue. Those reviewers who have reminded their readers that a little knowledge, &c., &c., are beating the air, and have not begun to realise what this " outline " business is all about. It has nothing to do with short cuts to knowledge, nor is it expected or desired that the Outline should be a summary of knowledge. It is neither a flying jump at omniscience, nor a cheap way of developing pretentious conversation. It is a revolt against and a suggested remedy from the evils of specialisation.

Now the way to avoid the disadvantages of over-concentration on your own garden is not to jump over the fence and interfere with your neighbour's. Rather is to call on your neighbour, see how the landscape looks from the angle of his little patch and discuss with him the interesting things which lead him to plan and cultivate as he does.

This, then, is what the Outline should do; it should enable us to share some of the interests which help to keep the other fellow going; and as with all books it is essential that the other fellow should be as interesting as possible. From this point of view the reader will not be disappointed in the book now under review. It has tone, it is frank, and it is interesting.

A. C. STEWART.

THE SOCIAL SERVICES

The British System of Social Insurance

By PERCY COHEN, with an Introduction by the Rt. Hon. NEVILLE CHAMBERLAIN, M.P. Pp. 278. (Philip Allan.) 12s. 6d. net.

THERE is a class of books which particularly suffer from the liability of having their matter frequently altered in important details through changing phases of the subjects with which they deal. Among such publications are legal text books, which are affected by the latest decisions of the Law Courts; travel guide books, which are rendered inaccurate by changes in railways, roads and hotels; and manuals of social systems, which are modified by amending legislation. It is not intended by this preliminary observation to minimise the usefulness of such books, which indeed are often of great help and educational value, but merely to emphasise the oft-repeated warning to the unwary, that students, travellers and seekers after information must bear these inherent limitations in mind and direct themselves accordingly.

The author of " The British System of Social Insurance " deserves both congratulation and commiseration. His work is an ambitious and successful attempt to bring within the scope of one volume a digest of the whole body of enactments dealing with social insurance. There are, of course, manuals of a more or less elementary character, dealing separately with particular subjects, such as health insurance, unemployment, and pensions, for the information of the man in the street; and there are larger treatises of a more technical and advanced nature limited to one subject; but a comprehensive book comprising all the schemes of insurance is believed to be something new. It has clearly involved much labour, and is, as far as it goes, commendably accurate. It should prove of service to the politician and social worker, mentioned by Mr. Neville Chamberlain in his Introduction, and to all those whose interests and duties bring them into an intermediate field between the actual technical administrators and the ordinary beneficiaries of insurance.

It is no mean achievement to confine the " chequered and turbulent history " of Unemployment Insurance to some 80 pages, and to give an outline of the " comparatively smooth and prosperous career " of National Health Insurance in 50 pages, when it is remembered that the Acts and regulations relating to the latter subject

alone run to about 700 pages. Moreover, as no one knows better than those engaged in the interpretation and administration of the Acts, the subjects bristle with complications, and to reduce their essential provisions to concise, clear and accurate statements, as Mr. Percy Cohen has done, is to succeed in a difficult task.

The author's preface is dated 31st December, 1931, and every effort has obviously been made to bring his review of social insurance right up to the latest possible date. It is therefore rather unfortunate from his point of view that, within a few months of publication, an important amending National Health Insurance and Contributory Pensions Bill should be introduced in May, 1932, and receive the Royal Assent on 13th July, 1932, which substantially alters several statements which were accurate enough at the time of publication. This Act comes into operation on 1st January, 1933, from which date, among many other changes, the ordinary rate of sickness benefit for a married woman will be 10s. a week instead of 12s., and the disablement benefit rate will be 5s. a week for a married woman, and 6s. a week for other women, instead of the former 7s. 6d. a week.

The new Act will also materially modify statements made in paragraphs of the book relating to arrears, unemployment, prolongation and termination of insurance. This is unfortunate, but may, however, happily be remedied when, as is to be hoped, a second edition is called for. In other respects the author is, of course, aware of the probability of impending changes, such as in Unemployment Insurance, consequent upon the awaited final report of the Royal Commission under the chairmanship of Judge Holman Gregory, K.C.; and in Industrial Assurance, in regard to which a Departmental Committee under the chairmanship of Sir Benjamin Cohen, K.C., was set up in 1931 to examine and report on the law and practice relating thereto.

The fact is that of necessity there can be no finality or stability in matters regarding the intimate relation of the life of the people to insurance. Law, and social legislation in particular, are the expression, sometimes retarded and sometimes advanced, of the expanding life and conceptions of the people; and it therefore follows that the legislature must reflect their constant growth and development. Otherwise there would be stagnation. Mr. Percy Cohen himself says in his Preface: " We may be certain that none of the various systems has reached a position of finality."

The framework of the work is excellent. Each of the six separate subjects is introduced by a chronologically arranged " history and development " to provide the necessary political and legislative background. Then is given a statistical statement, followed by an outline of each scheme, with explanatory notes on details. Thus

in the chapter dealing with Workmen's Compensation we are taken back to the position prior to the Employers' Liability Act of 1880, through the Workmen's Compensation Acts of 1897 and 1906, up to the schemes of 1930 under the Silicosis Acts. The history of the National Health Insurance Scheme is traced from 1911 to the Prolongation of Insurance Act, 1931. It may be of interest in this connection to record that, in the twenty years of national health insurance, from the commencement of the scheme on 15th July, 1912, to the passing of the last Act on 13th July, 1932, no fewer than 25 amending or supplementing Acts have been passed, thus showing the growing development and adaptations of the system. Its magnitude is indicated by some figures given under the heading "Current Statistics." There are, states the author, in Great Britain and Northern Ireland 17,177,000 insured persons. "Since 1912 the sum of £370,000,000 has been distributed in benefits. In 1930, £32,000,000 was so spent." He cites the Chief Medical Officer of the Ministry of Health to the effect that there was lost to the nation in 1930, through sickness of the insured population, a total of about 26,500,000 weeks' work or 510,577 years. The real significance of this so-called "loss" has always been something of a puzzle, for in what sense can there be a loss when there is no work in the world for millions of healthy people?

After dealing with the nationally administered services of Health, Pensions and Unemployment Insurance the book has a chapter on the subject of Workmen's Compensation, which, though not strictly a comparable insurance service, is closely connected with the State services in some respects. But it must be confessed that the inclusion of a last chapter relating to Industrial Assurance came as some surprise, as this is purely a voluntary and independent matter. It may be that there are some 80,000,000 small policies belonging to the working classes, but can it be said that the system has become "an integral part of the national organisation of Social Insurance" (p. 246)? And surely if industrial assurance is deemed to be part of "The British System of Social Insurance," how much more would one expect a chapter on Friendly Societies, and even Trade Unions, with their long history of insurance against sickness, unemployment and death?

In reviewing a book of such excellence, however, it would be ungracious to end on a note of criticism, either of inclusion or omission. Rather let it be said that thanks are due to Mr. Percy Cohen for this orderly arrangement and careful digest of a comprehensive survey of the field of social insurance.

X. Y. Z.

LOCAL GOVERNMENT LAW AND PRACTICE

The Development of Local Government

By WILLIAM A. ROBSON. (George Allen and Unwin.) Price 12s. 6d.

THIS book is an endeavour to show on the one hand the great importance of local government in our national life and on the other hand the waste, inefficiency, overlapping, and general chaos, also the lack of fundamental brain work and of the higher imagination, which are said to characterise its structure and administration. The part of the book dealing with Government audit was reviewed in the issue of this Journal for April, 1931.

No one will dispute that local government is important. Few will deny that the structure is too complex and that there are too many small authorities. But the author does not appear to realise the remarkable results which English local government with all its defects has achieved. It is only necessary to state a few familiar facts with regard to the public health services. Typhus and cholera have been practically entirely overcome. Great reductions have been effected in the incidence of enteric fever, malaria, scarlet fever, diphtheria, tuberculosis and other diseases. The mortality rate of infants under one year per thousand births was in 1871-75 153, in 1930 60, and in 1931 66. In 1876 the general death rate per thousand living was 20.9, in 1930 11.4 and in 1931 12.3. The expectation of life at birth in two generations has increased by 15 years. These results do not indicate a lack of brain work and imagination. It is true that they have been achieved at great financial cost. Whether that cost would have been so great had the organs of government been less imperfect is a question that calls for serious consideration. Mr. Robson admits that there has been remarkable efficiency in certain spheres. That there is some inconsistency in this and other respects in the book is partly accounted for by the following facts.

Any person who writes about local government is under the disadvantage that his book is likely to be out of date soon after it is printed. Mr. Robson appears to have been under the necessity of making alterations from time to time because far-reaching changes were taking place while the book was being written. Defects pointed out in an early chapter were already in process of being remedied before a later chapter was reached. Thus the author points out in an early chapter the defects in the system of land drainage owing to

the welter of land drainage authorities that existed. The Land Drainage Act, 1930, is only referred to in a later chapter of the book. That Act went a long way to remedy the defects by setting up Catchment Boards for rivers. In an early chapter the author states that there has never been any comprehensive attempt to overhaul local government areas in this country. Much later he refers to the county reviews required by the Local Government Act, 1929. In actual fact a comprehensive overhaul of local government areas is now being carried out under the Act with the object of securing more effective units and abolishing authorities that are too small to discharge properly their statutory duties. There are several indications that Mr. Robson had not had time to appreciate fully the great advance effected or made possible by the Act of 1929 towards the ideals which he has in view of " integration, unification, and simplification." He objects on grounds that are inexplicable to such a simple and useful provision as that enabling a Rural District Council to contribute from their general funds to expenses of sewerage and water supply which would otherwise fall upon a parish and enabling a county council also to contribute.

The truth is that progress in local government has been so rapid that it is almost impossible for any writer or thinker to keep pace with it who is not actively engaged in the work. Thus the author complains of the backward state of rural water supply and of measures for the prevention of river pollution. He points out that the loans sanctioned for rural water supply (expressed in thousands) were in 1924 £327, 1925 £460, 1926 £386 and in 1927 £336, from which he argues that a set-back is taking place. The Annual Reports of the Ministry of Health show that the more recent figures are (in thousands) 1929-30 £424, 1930-31 £680, 1931-32 £917. For sewerage and sewage disposal the figures are also striking. In a few years the loans sanctioned to all local authorities have gone up from about three to about eight millions. (Approximately half of this expenditure might be described as relating to measures for the prevention of pollution of rivers.) The outstanding net debt of local authorities for all purposes has risen from £171,170,327 in 1884-85 to £1,157,879,087 in 1929-30.

Facts of this kind do not indicate that local government, to use the author's phrase, has got into a " pedestrian rut " but rather that the speed limit has been exceeded. Some slowing down is now inevitable in view of the financial crisis. The history of local government in recent years reminds one of the Scottish Minister who, after a drought, prayed in church for rain. During the prayer a downpour occurred in such quantity that the Minister wound up by praying for moderation.

Mr. Robson holds strongly that the development of local government is much impeded by the doctrine of "*ultra vires*" and that in certain spheres and subject, it may be, to a rate limit local authorities should be empowered to do anything that they are not expressly forbidden to do. Here one cannot help sympathising with his point of view. A consolidation of the law of local government, with those amendments which experience has shown to be necessary, is much needed and every year this task becomes more difficult owing to the complexity of the law. Mr. Robson argues the matter not in this but in a much wider aspect. He holds that the limitations of "*ultra vires*" prevent local authorities from doing what they should do to develop the "cultural" aspects of life, by municipal theatres, by guarding local beauty spots and amenities, by promoting such exhibitions as will develop the public taste, by providing a suitable environment for the development in all directions of the faculties and desires of the citizens. "Local institutions should be imbued with majesty, colour and conviction." "The greatest need in English local government to-day is a recapture of the kind of civic sense which invested some of the older cities with a special glory in the Tudor age."

Here Mr. Robson is on strong ground. There are other arguments which might have been used in support of his case. The fact that so few electors vote at local government elections is undoubtedly due largely to the fact that local government has not sufficient colour to appeal to that sentiment and emotion which are latent in the Englishman, however much they may be obscured by the deep taint of the commonplace and the materialism which the age of machinery has brought with it. The fact that England in the past has produced a body of poetry, surpassing that of any other nation except the ancient Greeks, is evidence of the truth of this statement. If more interest were taken in elections it would happen more often than at present that the best men in a community would serve on local bodies and the work all round would be excellently done. This is an argument which should appeal to the practical man to whom in these days deference must be paid. The case might also be put as follows. The function of government, as Aristotle says, is first to provide for life and after that for a good life. Local government, as shown by the figures already cited, has helped to prolong life and add to its quantity. It should also be its function to enrich life and add to its quality. Local government is in fact tending to develop in this direction.

Mr. Robson quotes the late Sir John Gatti as having said (with reference to the question of municipal theatres) "all progress in art has been made by the rebels and not by the officials." The worker

in local government, in a medium where movement has been so rapid and where old ideas are constantly giving place to new, is apt to be critical of other spheres of life which are more static and more obedient to precedent. In other words, the official is becoming a rebel and therefore an artist. It is well to close with a note of sympathy with much that is contained or implied in this book, with revolt against national complacency, against subservience to customs and conventions that have outlived their usefulness, against all that is drab and commonplace " was uns alle bändigt, Das Gemeine "; and with the aspiration that local government may be the means of toning up the whole life of the people.

W. R.

Principles of Local Government Law

By W. Ivor Jennings, M.A., LL.B. (University of London Press Limited.) Price 6s.

In this book, Mr. Jennings has departed from the traditional method of dealing with local government law and has confined himself to an examination of the legal and constitutional principles underlying the English system of local government, touching on the functions of local authorities only in so far as it is necessary to illustrate his points. In the preface we are told that the book has been written mainly for university students and that the approach has been " definitely and deliberately academic." It is to be hoped that the general reader interested in local government will not be deterred from reading the book by this expression, which he is apt to associate with long and learned arguments ending in obscurity. Whether it be that the method of approach is peculiarly suited to the subject or that Mr. Jennings' gift for marshalling his material and expressing himself concisely has prevailed notwithstanding the method, the result has been a most instructive work giving in the limited space of 260 pages a clear exposition of the subject which should be of value to both student and general reader.

Mr. Jennings' concern is with the principles underlying the law as he finds it. In Chapter II he traces the development of local institutions from the time of the Shire and the Sheriff to the present day. He does not express any view on the future trend of development. " How future development will tend or ought to tend is not for a lawyer to prophesy." It is clear, however, that he is not on the side of those who see nothing but chaos in the present system. The confusion which existed in county government before the creation in 1888 of the county councils, and the great strides which have been made in recent years towards clearing away this confusion are forcibly

brought out. Modern legislation, culminating in the Local Government Act, 1929, has seen the practical completion of the concentration of local government functions in popularly elected councils with administrative jurisdiction over given areas. It is true that Bentham's ideal of local government areas organised solely for utility in administration has not been achieved (the historical counties and boroughs still remain), but machinery is available in the Local Government Act, 1929, for the alteration of borough, urban district, rural district and parish boundaries. It is not possible under the Act to extinguish a borough except with the Borough Council's consent, and little can be done in the way of altering county boundaries. Only experience of the working of the Act can show how far it can and will be operated to secure much-needed adjustments of local authority boundaries and removal of anomalies, and whether the resulting units of administration will work reasonably satisfactorily without any further and more drastic provisions.

The chapters on central control and powers and acquisition (V and VI) are of special interest in view of the alarm in some quarters at the growth of quasi-judicial functions of government departments, the increased delegation by Parliament to the departments of powers to legislate, and the present close control by the departments of local authority administration. That the present arrangements have advantages there can be no question. The courts as at present organised are not altogether a suitable body for dealing with many quasi-judicial questions arising between local authorities and electors. The complexity of local government and the limitations on Parliamentary time are such that some departmental legislation is essential, unless Parliamentary procedure can be organised to deal with it. It is, however, with the control of government departments over administration that Mr. Jennings more particularly deals. He shows how close central control has gradually come, mainly through financial powers, without it being laid down in the Statutes as a general principle, except in the case of poor law, and how at present government departments have varied powers of directing local authority administration. In practice, however, government departments act more in an advisory than in a directory capacity, and whatever the theoretical merits or demerits of powers of close control, great benefits have been derived by local authorities from having at their disposal a body of experience like that acquired by the Ministry of Health. This is clearly brought out and due weight given to it in Chapter V. Whether this body of experience could be maintained if the directory powers of government departments were curtailed and their functions more limited to acting in an advisory capacity is a matter for conjecture. " There can be no true democracy

where policy is dictated by experts in Whitehall and carried out willy-nilly by democratically affected local authorities," Mr. Jennings asserts in a previous chapter. It may well be that the loss of benefits to local authorities from the present arrangements would be too great a price to pay for the attainment of the true democratic ideal.

The first step to be taken by anyone who wishes to take part in the building up of a more perfect local government structure is to obtain a firm grasp of what has already been done and the principles underlying the progress made. This book will be a valuable aid to him in his study of fundamentals.

A.

Local Government in the Modern Constitution

By W. Ivor Jennings, M.A., LL.B. (Chas. Knight & Co., Ltd.) Pp. 71. Price 3s. net.

To all concerned I owe apologies for delaying the review of this book. Many readers of Public Administration will already be familiar with its contents, and to them the customary recommendation that this is a book which should be read, &c., &c., will not appear as very original. There may, however, be others who have not so far found the time or opportunity to inform themselves fully of the contents of this book, and my notes may therefore be regarded as for their benefit exclusively.

The preface informs us that " This little book consists of four lectures delivered in July, 1931, at the Summer School of the National Association of Local Government Officers at Oriel College, Oxford."

The subject matter is arranged in two main divisions *Decentralisation* consisting of VII chapters and *Bureaucracy* containing VI chapters, and, be it said, Mr. Jennings is a believer in both decentralisation and bureaucracy.

In dealing with the first topic he discusses the moral status of local governing bodies as essential parts of the constitutional machinery of this country, deriving their chief significance from their representative character; compares this with the legal status, recognised by courts of law, which normally place local authorities and profit-making concerns in the same category; and suggests that legal status will ultimately approximate to moral status when local government is reorganised into the system normally designated by the term *Devolution*.

The section headed *Bureaucracy* takes up the challenge hurled at the Civil Service and public administrative authorities generally of " a conspiracy to create a new despotism, to take administration out of the control of the Courts, to deprive us of a control upon

which rest the foundations of the British Constitution." Mr. Jennings starts his examination of this accusation by a frank recognition of the fact that the private citizen may frequently require the services of a strong judicial system to protect his private interests against the general interest represented by the administrative authority; but he argues that any attempt to give the individual the same status before the law as that enjoyed by the administrative authority is wrong in principle and in the end is bound to result in a system which will deprive the individual of the protection which ought to be his.

Another point is that, as manned in this country, the Courts are not conspicuously well qualified to deal with social and administrative problems. That as a means of obtaining properly qualified courts, this country might study and adapt to its own needs the system and methods of the administrative courts of France.

From a consideration of this matter one question arises to which Mr. Jennings does not address himself. He makes it abundantly clear that a great part of judicial work is concerned with interpretation, frequently involving the extension of law, but he does not deal with the suggestion that over a great range of social and economic legislation these extensions are so closely related to the policy of the legislature that responsibility for them should be exercised only by an authority more immediately responsible to parliament than either the courts of this country or the administrative courts of France.

This, however, is not a criticism of the book now under review. Within these 71 pages Mr. Jennings has compressed a remarkable amount of very significant material. As an authority Mr. Jennings needs no recommendation from anyone, and certainly not from the present writer.

A. C. STEWART.

Problems of City Life

A STUDY IN SOCIOLOGY

By MAURICE R. DAVIE. Pp. 730. (Published by John Wiley & Sons Inc., New York, and Chapman & Hall Ltd., London.) Price 25s. 6d. net.

PROFESSOR DAVIE'S approach to his subject is historical and analytical. He belongs indeed to that group of American thinkers, the most illustrious of whom is Walter Lippmann, who support an economic interpretation of history, holding that the economic structure of society largely conditions the whole life of the individual and plays a far greater part in fashioning beliefs, habits and culture than do these latter in determining economic developments. For him the problems of city life must be viewed from the standpoint

of the adaptation of habits and institutions acquired in a pre-industrial age, or in an earlier phase of industrial development, to the twin factors of progressive industrialisation and urbanisation. Under the new conditions the requirements of human nature must be satisfied and the evils inherent in unregulated urban growth combated or avoided. He is concerned mainly with the large city, with its heterogeneous and migratory population. Here he passes under review the problems of town-planning, housing and communications, of public health, of family life, ethics and the Church, of education and recreation.

The books opens on a somewhat pessimistic note. We are told of the overgrowth of cities to the point where their vital services are threatened with collapse, of centralisation passing the limits of economy and of an equally irrational residential decentralisation; of efforts to meet the difficulties created by concurrent overcrowding at the centre and distance from the industrial and business areas, by the provision of travelling facilities which defeat their own purpose, when unaccompanied by town-planning, since they merely encourage residential decentralisation, attract further numbers to the bounds of the city and eject the growing business population during a comparatively short period in the more than ever overcrowded central districts. They do nothing, indeed, to lighten the main problems of peak traffic loads and the pyramidal structure of the town. We are given a picture that is discouragingly reminiscent of Mr. H. G. Wells. Professor Davie is concerned to demonstrate the fundamental importance of town-planning, without which there can be no release from inadequate housing conditions for a large number and physical discomfort for a majority of the population in any large city; and of town-planning, zoning, practised with success notably in many German cities, is the most essential aspect. From this pessimistic analysis Professor Davie turns to bid us be of good cheer, for " the conditions of life in the city are capable of indefinite modification through the action of individuals or through the concerted action of the community." He does not suggest indeed that economic forces themselves can be controlled. The most that a poor humanity, floundering amid the consequences of its own inventiveness can do, is to put certain geographical curbs on industrial developments and adapt its habits and institutions to meet the physical and psychological defects of the industrial system.

Of certain subjects it may be said that they follow the general western European, if not English, outline—in particular, housing, traffic and public health, although it would be impossible for this country, with its large and mainly stationary agricultural proletariat, to share the view that the housing problem is a purely urban one.

Other subjects have a peculiarly American character, including education, the press and to a large extent recreation (although the latter shows the impact of European customs). For America also, which still remains the " New World," the problem of the mobility of the urban population is particularly acute and impinges on almost every other question considered.

The book, which contains a large amount of useful information in easily assimilable form, is essentially a work of reference and is to a considerable degree compilatory in character. It is clear in structure and the style is lucid and interesting, but one is tempted to name excessive the lengthy extracts from specialised works, although they are relevant and read easily into the text. The argument is likewise couched in such unpretentious terms that it often fails to stand out from the body of illustrative writing and tends indeed to glide somewhat smoothly over the surface. Only a reader with previous knowledge of the subject would be aware of its implications and for him, since he is likely to be a specialist already, the book is surely not intended. It is suited rather to be a manual for John Citizen and for specialists in any of the subjects treated who wish to gain some insight into related problems and some conception of the whole organism of which their own subject is but one of many component parts.

M. L. DHONAU.

ADMINISTRATIVE LAW

Cases and other Materials on Administrative Law

Edited by FELIX FRANKFURTER and J. FORRESTER DAVISON, and published in the C.C.H. University Casebook Series by the Commerce Clearing House, New York, Chicago and Washington. (1932.)

THIS massive collection of materials is intended to introduce the student to the basic considerations which underlie the evolution of so-called Administrative Law. The contents of the work afford food for the comparative study of the different systems of public law in the United States of America, Great Britain and certain of the British Dominions. The collection sets out to deal with law in the making and therefore is not confined to case law and legislation, but includes in its scope legislative debates, rules and regulations, legal writings and even lay comment. There is included, for example, a leader which appeared in *The Times* in April, 1928, on the familiar controversy raised by clause 4 of the Rating and Valuation Bill.

Starting, as introductory materials, with extracts from such various sources as Aristotle, John Locke, Montesquieu, Jefferson, F. W. Maitland and various other authorities, the editors have classified the collection under the heads Separation of Powers, legislative, executive and judicial; Delegation of Powers; and Judicial Control of Administrative Action.

There is a misprint on page 194 where, in dealing with the subject of Judicial Power, George III is represented to have stated in the King's Speech respecting the independence of the Judges: " I look upon the independency and unrightness (*sic*) of the Judges of the land as essential to the impartial administration of justice." The reference to this speech should be 15 Parliamentary History 1007 (1761).

Members of the Institute and students of Public Administration generally will find much to interest and instruct them in this volume as well as many matters with which they are already familiar. It reprints two papers contributed to the Institute, one in 1924 by Sir Josiah Stamp on " Recent tendencies towards the devolution of legislative functions to the Administration," and the other in 1927 by Sir Maurice Gwyer on " The powers of Public Departments to make rules having the force of law "; refers to two others by T. M. Cooper, K.C., and L. G. Gibbon—which appeared in the July issue of this

journal; and gives due prominence to the case of Minister of Health *v.* The King: *ex parte* Yaffe, reported in IX PUBLIC ADMINISTRATION, p. 353.

It may perhaps be regarded as unfortunate that the editors have not thought fit to assimilate the vast amount of material contained in these 1,146 pages in a series of reasoned articles on each subject. To have done so would certainly have added considerably to the value of the work from the point of view of the student.

F. A. E.

The Interstate Commerce Commission

A Study in Administrative Law and Procedure. By I. L. SHARFMAN, Professor of Economics in the University of Michigan. (Obtainable in London from George Allen & Unwin Ltd. Part one 17s. 6d. net and part two 22s. 6d. net.)

THESE are the first two of four volumes in the course of publication by the Commonwealth Fund, New York, in connection with Professor Sharfman's researches on the Interstate Commerce Commission, produced under the auspices of the Legal Research Committee.

The Interstate Commerce Commission is a federal agency, created by an Act of 1887, engaged in the regulation of railroads and other common carriers. While the jurisdiction of the Commission extends to a number of utilities other than railroads, both its legal status and its practical significance can be largely gathered from a study of its relationships to the railroads. To this aspect, therefore, the work pays detailed consideration.

The Commission has power with regard to the regulation of rates and the limitation of profits as well as many other powers and duties. It acts virtually as a super directorate for the entire railroad net. It has sole authority for the issue of railroad securities and remains the sole depositary of actual power where intrastate charges or practices or arrangements affect adversely the freedom of interstate commerce or run counter to regulations set up by the federal agency entrusted with its control.

The first volume deals with the legislative basis of the Commission's authority and traces the evolution of the Interstate Commerce Act and allied statutes, the principal being those of 1887, 1903, 1906, 1910 and 1920, and indicates the nature of the powers and duties of the Commission and its effect on the development of the legislative structure.

The problem is approached historically. The Act of 1887 applied to common carriers " engaged in the transportation of persons or

property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management or arrangement for a continuous carriage or shipment." During the greater part of the first two decades of its existence the Commission laboured under great difficulties in seeking to accomplish results of permanent significance. At almost every step it was hindered by the open hostility of the railroads and the unsympathetic attitude of the Courts. The Commission's orders were reversed with startling frequency, not only on technical legal grounds, but also because of differences of judgment between the Commission and the Courts in large matters of economic policy. A climax was reached when the Supreme Court decided, in 1897, " that the power to prescribe rates or fix any tariff for the future is not among the powers granted to the Commission." It was by the Act of 1906 that the foundations were laid by Congress for the development of a system of genuine administrative control. The Commission's powers were further augmented by an Act of 1910, while the Transportation Act of 1920, the latest legislative measure under which the Commission is now functioning, marks the beginning of a new approach in railroad regulation.

The survey of legislation so made is not confined to a mere recital of the prevailing statutory duties of carriers and powers of the Commission, but the emergence of these duties and powers is traced historically with special emphasis on the part played by the Commission in moulding their development, supplemented by a detailed presentation of the legislative difficulties encountered by the Commission and its reaction to them.

The second volume deals with the scope of the Commission's jurisdiction with regard to railroad regulation and the nature and direction of the control exercised over allied utilities, the assertion of federal power over intrastate commerce, and the exercise of administrative discretion.

Some indication of the immensity of the researches involved may be derived from the fact that the Commission's decisions are rapidly approaching two hundred volumes. These are being augmented at the rate of more than a dozen volumes a year. Moreover, the pertinent judicial decisions, including those of the lower federal courts, run into hundreds.

Students of economics and of comparative administration will find in these two volumes a mine of information.

F. A. E.

Brief Notices

" Industrial Psychology in Practice." By H. J. WELCH and G. H. MILES, D.Sc. (Sir Isaac Pitman & Sons Ltd.) Price 7s. 6d. net.

THIS book gives an account of the kind of results which industrial psychologists have achieved in industry. It is probable that public officials will find in it few (if any) experiments which can be copied directly in the work for which they are responsible. They will be interested, however, in the evidence of what can be done when one (in the first instance) views working conditions and methods, not from the point of view of profit or efficiency, but from that of the happiness of the worker. It may not be true that he who would secure efficiency must first of all forget about it, but certainly those who have borne in mind the human needs of those who work under their direction have not been last in the race for efficiency.

Is there scope for the application of this point of view and its special technique in Central and Local Government offices and committees?

X. X.

" An Introduction to Sociology." Edited by JEROME DAVIS, Ph.D., and HARVEY ELMER BARNES, Ph.D. (D. C. Heath & Co.) Price 18s. net.

IN his introduction to this hefty volume, Jerome Davis states that " The time has come when it is impossible to term the trained sociologist as ' the fake professor of pretended science.' " But " the (gentleman) doth protest too much methinks."

The volume is divided into IV books. Book I contains 190 pages of history arranged in eight chapters and is entirely the work of the second editor, H. E. Barnes.

Book II, on " The Forces Shaping Society," is divided into four parts: Part I, " Society and its Physical Environment," by Ellsworth Huntington, is a very useful essay in six chapters on the principles of regional geography. Part II contains a similar number of chapters, on " Society and its Biological Equipment," by F. H. Hankins, and is mainly an exposition of Mendelian heredity. Part III, " The Psychological Foundations of Society," by L. L. Bernard, gives an outline in seven chapers of the Behaviorist school of psychology. Part IV, " Society and its Cultural Heritage," by Malcolm M. Willey, devotes another seven chapters to the application of behaviorist psychology to social groups.

Book III, " Social Organisation," by Seba Eldridge, is in one part, containing four chapters, and deals with the factors which cause people to organise themselves into groups and the problems of control which arise.

Book IV, by the first editor, Jerome Davis, contains over 200 pages on " Sociology applied to Social Problems," including health, poverty, crime, racial conflict, &c.

The first reaction of the average English reader of this book may be one of intolerant impatience. But in the end (if he reaches there) he will probably find himself wondering whether this very earnest group of writers may not after all be working towards something which may matter a great deal in the near future.

X. X.

" The Problem of Pricing in a Socialist State." By W. CROSBY ROPER, Junr. (Oxford University Press.) Price 7s. net.

UP to the present the amount of energy given to discussing administrative problems involved in current and increasingly popular demands for some organised planning of national economic life has been slight in comparison with the space taken up by descriptions of the superficial attractiveness of a plan in a world approaching chaos.

In a competent little essay (labelled an " Honours Thesis in Economics "), Mr. Roper attacks a major problem inherent in such proposals—the problem of fixing prices in a society in which the force of competition is either strictly limited or totally inoperative. He deduces the main elements of the problem from the general postulates of classical economics. He propounds no new theories, but his slight study is well balanced. His debt to Cassel will be obvious. Presumably depreciation of sterling and high printing costs in the U.S.A. are responsible for the high price of the book.

Seven shillings is a stiff price for an undergraduate essay of little more than 50 pages.

F. R. C.